

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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6 CHELSEA SCHOOL

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10           A hearing in the above-entitled matter was held on

11 May 26, 2011, commencing at 9:32 a.m., at the Council Office

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13 Building, Davidson Memorial Hearing Room, 2nd Floor, 100

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14 Maryland Avenue, Rockville, Maryland 20850 before:

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Lynn A. Robeson, Hearing Examiner

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A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

Robert Harris, Esq.  
Holland & Knight  
3 Bethesda Metro Center, Suite 800  
Bethesda, Maryland 20814

ON BEHALF OF THE OPPOSITION:

Dave Brown, Esq.  
Knopf & Brown  
401 East Jefferson Street, Suite 206  
Rockville, MD 20850

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WITNESSES:

Robert Youngentob	29/71/86/97
Expert in Urban Land Planning Design/ Real Estate Development Finance In Support of Applicant EYA, President 4800 Hampden Lane Bethesda, Maryland 20814	103/109

Vicki Warren Neighbor in Opposition 503 Pershing Drive Silver Spring, Maryland 20910	51/60/109
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Song Volk Neighbor in Opposition 8504 Springvale Road Silver Spring, Maryland 20910	86/125/161/178
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Jim Eisenmann Neighbor in Opposition 8611 Springvale Road Silver Spring, Maryland 20910	96
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Michael Gurwitz Neighbor in Opposition 8607 Springvale Road Silver Spring, Maryland 20910	103
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Cheryl Cort	117/122/125/129
Coalition for Smarter Growth, Policy Director	132/135
Washington Sustainable Growth Alliance Jury, Chair In Support of Applicant 1438 Florida Avenue, Northwest Washington, D.C. 20009	

Joan Bissell Neighbor in Opposition 504 Greenbrier Drive Silver Spring, Maryland 20910	129
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Kathleen Samiy Neighbor in Opposition Seven Oaks-Evanswood Association, President	132
Lisa Wilson Neighbor in Opposition 600 Woodside Parkway Silver Spring, Maryland 20910	140/142/144
Meg Klabatt Neighbor in Support 404 Mansfield Road Silver Spring, Maryland 20910	147/149
Tina Slater Neighbor in Support 402 Mansfield Road Silver Spring, Maryland 20910	150/152
Elizabeth Natsios Neighbor in Support 1221 Dale Drive Silver Spring, Maryland 20910	155/158
Kenneth Fuller Neighbor in Support 8912 Flower Avenue Silver Spring, Maryland 20912	159/161/162
Lew Winarsky Neighbor in Support 1212 Woodside Parkway Silver Spring, Maryland 20910	163/165/167
Jonathan Bernstein Neighbor in Support 9224 Kingsbury Drive Silver Spring, Maryland 20910	168/170
Elizabeth Brent Neighbor in Support 8615 Mayfair Place Silver Spring, Maryland 20910	174/176/178/181
Miguel Iraola Expert in Land Planning Hord Coplan Macht 750 East Pratt Street, Suite 1100 Baltimore, Maryland 21202	194/272
<u>ALSO PRESENT:</u>	
Anne Spielberg Neighbor in Opposition	



A P P E A R A N C E S (Continued)

ALSO PRESENT:

Tom Armstrong  
606 Greenbrier Drive  
Silver Spring, Maryland

Robert McGaughy  
No. 4, Springvale Lane  
Silver Spring, Maryland

James Ehrman  
612 Woodside Parkway  
Silver Spring, Maryland

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1 All right.

2 The other preliminary item, which I'll also repeat  
3 again, is we received a request from a County Council member  
4 who, while doing, in his normal review of blog articles,  
5 inadvertently read a article on this application and so he  
6 has requested that that article be put in the record as  
7 well, and it has been marked as an exhibit in the case. So  
8 if you wish to review those, I'm announcing it now so if you  
9 wish to review those prior to 11:00, you're welcome to do  
10 that.

11 With that, we are going to continue the hearing  
12 until 11:00 sharp and this session is adjourned.

13 MR. HARRIS: Madam?

14 MS. ROBESON: Yes.

15 MR. HARRIS: May I ask one preliminary or make one  
16 preliminary request, and I can restate it when we reconvene  
17 here. In light of the adjustment of the schedule today, we  
18 had had several community witnesses who we were, had  
19 scheduled to come in in the early afternoon expecting them  
20 to be able to testify. Clearly, the normal organization of  
21 our presentation would be for our operating witnesses, if  
22 you will, to carry on. Nonetheless, I've told those people,  
23 out of respect for their time, to come in the mid-afternoon  
24 here, 2:00-ish or so, and in that, I would ask your  
25 permission to interrupt our presentation if we could so that



1 they could speak and then be gone. It's obviously entirely  
2 your call. In the past, the hearing examiners have made  
3 such adjustments so I'm hoping you will consider that but  
4 again, I can --

5 MS. ROBESON: Well, yes. And I will consider it.  
6 I don't want to consider it or commit to anything right now  
7 without --

8 MR. HARRIS: I understand.

9 MS. ROBESON: -- Mr. Brown being here but thank  
10 you for the heads up so to speak and we'll take that matter  
11 up at 11.

12 MR. HARRIS: Okay.

13 MS. ROBESON: All right?

14 MR. HARRIS: Thank you.

15 MS. ROBESON: All right. We're off the record.

16 (Whereupon, at 9:36:54 a.m., a brief recess was  
17 taken.)

18 MS. ROBESON: This is Local Map Amendment No. G-  
19 892, a request for a, by Chelsea Residential Associations,  
20 LLC for requesting re-zoning from the R-60 Zone to the RT-15  
21 Zone, the townhouse zone, a property known as Lot 58,  
22 Evanswood, Section 1, Plat Nos. 22270,439 located at 711  
23 Pershing Drive, Silver Spring, Maryland.

24 Just as a preliminary matter, we have, we were on  
25 the record at 9:30. We continued the hearing to 11:00 to



1 accommodate Mr. Brown has a conflicting item at the Planning  
2 Board. I have just received a notification from the  
3 Planning Board that his item is taking longer than  
4 anticipated and requesting a further postponement of this  
5 case to times unknown.

6 At this point, I have not had, I had, because this  
7 came after we had been on the record, I was unable to  
8 contact Mr. Harris about the request. Before I go further,  
9 let me say this. For the record, I see a number of people  
10 in the audience. Are there any parties in the audience that  
11 are not represented by Mr. Harris? Okay. I do see some  
12 hands. Are you represented by Mr. Brown?

13 MS. SPIELBERG: Yes.

14 MS. ROBESON: Okay. Is there anyone here that's  
15 not represented by Mr. Brown? That is not represented by  
16 Mr. Brown? No.

17 MR. HARRIS: No. Other than the applicant.

18 MS. ROBESON: No, no. Okay. Let me do this,  
19 guys. What I'm looking for is people, I want to know who is  
20 represented by Mr. Brown and anyone that is not represented  
21 by either Mr. Harris or Mr. Brown, all right?

22 MS. SPIELBERG: Excuse me. Can I just clarify for  
23 the group here?

24 MS. ROBESON: Please come forward.

25 MS. SPIELBERG: Oh, sorry.



1 MS. ROBESON: And state your name and address --

2 MS. SPIELBERG: Yes.

3 MS. ROBESON: -- for the record.

4 MS. SPIELBERG: I'm sorry. I'm Anne Spielberg.  
5 I'm with SOECA, the group that is represented by Mr. Brown.

6 MS. ROBESON: Right. You are Mr. Brown's client,  
7 yes.

8 MS. SPIELBERG: And he is representing SOECA, the  
9 civic association, as well as Mr. Gurwitz and Ms. Schmit  
10 (phonetic sp.) as individuals.

11 MS. ROBESON: And okay. Who is -- are those  
12 the --

13 MR. GURWITZ: We are here.

14 MS. SPIELBERG: They're right there.

15 MS. ROBESON: Okay.

16 MS. SPIELBERG: And so I just want to clarify. My  
17 understanding is the other people who are here are appearing  
18 as citizen witnesses.

19 MS. ROBESON: So you're appearing independent of  
20 either of the attorneys. All right. Can you, this is going  
21 to get crowded at this table because we're not set up for  
22 this but would you kindly come forward because you have the  
23 ability, in addition to -- I'm sorry.

24 MS. SPIELBERG: Spielberg, Ms. Spielberg.

25 MS. ROBESON: Ms. Spielberg. I apologize. You



1 have the ability to be heard on this request for  
2 postponement, okay? So, Ms. Spielberg, could you stay right  
3 there? Don't go anywhere. And can you come forward as  
4 well. And whoever is not represented by Mr. Brown that is,  
5 you know, wishes to be heard in this case. All right. Now,  
6 what I'm going to do -- okay. We do -- okay. Ma'am, why  
7 don't you have a seat over -- he doesn't bite. He looks  
8 like he --

9 MR. HARRIS: No, no.

10 MS. ROBESON: No. So what I'm going to do, out of  
11 an abundance of caution, what I'm going to do, out of an  
12 abundance of caution, is to have you identify yourselves for  
13 the record. Please state your name for the record and  
14 address.

15 MS. BISSELL: Okay. My name is Joan Bissell and I  
16 live at 504 Greenbrier Drive.

17 MS. ROBESON: Okay. And, sir?

18 MR. ARMSTRONG: My name is Tom Armstrong. I live  
19 at 606 Greenbrier Drive, Silver Spring.

20 MS. ROBESON: Okay.

21 MS. WARREN: My name is Vicki Warren. I live at  
22 503 Pershing Drive.

23 MS. ROBESON: Okay.

24 MR. EISENMANN: My name is Jim Eisenmann. I live  
25 at 8611 Springvale Road.



1 MS. ROBESON: Okay. Is that everyone? Sir?

2 MR. McGAUGHY: My name is Robert McGaughy. I live  
3 at No. 4, Springvale Lane.

4 MS. ROBESON: Okay. And I see one more hand  
5 raised.

6 MR. EHRMAN: James Ehrman at 612 Woodside Parkway.

7 MS. ROBESON: Okay. Forgive me if I don't  
8 remember all your names immediately. What we have is a  
9 request for a postponement of an indefinite nature. We had  
10 secondarily, possibly another 30 minutes. I just was handed  
11 a note saying Mr. Brown is leaving Park and Planning now and  
12 is on his way here which indicates to me that he is going to  
13 proceed today, so I apologize for this somewhat haphazard  
14 approach. We don't normally have this. I would like to  
15 hear if we, I would like to hear from everyone about how  
16 they feel about postponing this for another half an hour or  
17 possibly, if anyone feels that there's a procedural problem  
18 postponing this more than a half an hour.

19 I'd like to start with Mr. Harris. I apologize.  
20 I did not know about this request when I first came on the  
21 record so I didn't hear about it until recently. Mr.  
22 Harris, could you comment? Do you have anything you wish to  
23 say?

24 MR. HARRIS: We have no problem postponing it a  
25 half an hour. I would like to try to start the hearing



1 before lunch and then if we can abbreviate lunch to some  
2 degree a little bit. We do have a lot of testimony we want  
3 to get in today and so we're hoping to really, you know,  
4 dive into it but a half an hour should not --

5 MS. ROBESON: Would it help if we go past 5? I  
6 mean, we --

7 MR. HARRIS: It would help me. Yes, ma'am.

8 MS. ROBESON: We can -- I'm not asking -- perhaps  
9 we could work with your profession, make your professional  
10 witnesses stay and but that's something we can discuss when  
11 Mr. Brown gets here. Would anyone else like to comment on  
12 what's being presented?

13 MR. EISENMANN: It may be, I don't know what the  
14 procedures are, how long lunch usually is or if there's a  
15 set time, but since we're all just waiting, it may be better  
16 to take lunch now.

17 MS. ROBESON: Well, that was what I was thinking.

18 MS. SPIELBERG: That's interesting.

19 MS. ROBESON: Now, is there anyone that has an  
20 issue with postponing it then until, how long do you think  
21 you'd feel comfortable with lunch?

22 MR. HARRIS: Noon?

23 MR. EISENMANN: I don't know what's around so.

24 MS. SPIELBERG: I'm just --

25 MR. HARRIS: There's a cafeteria right here.



1 MS. ROBESON: There's a cafeteria here.

2 MS. SPIELBERG: I'm just concerned about Mr.

3 Brown's ability to get here given traffic and also, he --

4 MS. ROBESON: Okay. What about noon?

5 MS. SPIELBERG: Well, I'm just also, if he has to  
6 go without eating as well, I think that's a problem for us  
7 in terms of --

8 MS. ROBESON: Okay. Mr. Harris, what's your  
9 feeling? Do you want to say, do you think noon is enough?

10 MR. HARRIS: If he left five minutes ago, he  
11 should be here by 20 to noon. Yes, it won't be a leisurely  
12 lunch but.

13 MS. ROBESON: 12:15?

14 MS. SPIELBERG: 12:15 I think is a little more  
15 realistic.

16 MS. ROBESON: 12:15, do you think is enough time?

17 MR. HARRIS: Perfect.

18 MR. EISENMANN: I think that's good.

19 MS. SPIELBERG: I hope he doesn't hit any traffic.  
20 You know how it is.

21 MS. ROBESON: Okay.

22 MS. WARREN: I just came from that area. I didn't  
23 have any traffic.

24 MR. EISENMANN: I didn't hit any.

25 MS. ROBESON: Okay.



1           MR. HARRIS:   Okay.   And then if I understood you  
2   correctly, you're implying that at least you're comfortable  
3   going past 5?

4           MS. ROBESON:   I will accommodate the situation by  
5   going past 5.   I don't know how long, you know, we'll have  
6   the stamina to go past 5 but we will certainly try to kind  
7   of make up the difference as far as the unexpected delay.

8           MR. HARRIS:   That's fair enough.

9           MS. ROBESON:   All right.

10          MS. SPIELBERG:   Thank you.

11          MR. HARRIS:   Thank you.

12          MS. ROBESON:   Okay.   And if I see people keeling  
13   over in the back, then we might have to continue it to a  
14   second day.   I am checking dates for a second day now.   What  
15   the procedure, if we need a second day, and I am thinking  
16   perhaps that we will need a second day, the procedure for  
17   rescheduling a second day is that I will announce it on the  
18   record today so we don't have to send notice out.   So if you  
19   are unrepresented -- I assume that Mr. Brown and Mr. Harris  
20   will inform their clients of the second date.   If you're not  
21   represented by either one, you may want to check with our  
22   office on whatever date is, the case is continued to.

23          MS. SPIELBERG:   Can I just get one clarification?

24          MS. ROBESON:   Sure.

25          MS. SPIELBERG:   Because I had understood that June



1 30th was already set.

2 MS. ROBESON: We have that date, we have that date  
3 in reserve. I think one issue is that we're looking at now  
4 is do we need even another, another date so.

5 MS. SPIELBERG: Okay.

6 MS. ROBESON: Because we didn't expect this delay,  
7 all right?

8 MS. SPIELBERG: Yes. I understand. Thank you.

9 MS. ROBESON: So just to try to get everybody on  
10 the same playing field, all right? So with that, we are  
11 going to go off the record again. I hope the court reporter  
12 brought some extra food. If not, you may want to repair.  
13 We are going to go off the record again until 12:15 at which  
14 time, we will reconvene and hopefully, everyone will have  
15 the opportunity to be here.

16 MS. SPIELBERG: Okay.

17 MS. ROBESON: All right?

18 MS. SPIELBERG: Thank you.

19 MS. ROBESON: Thank you.

20 MR. HARRIS: Thanks.

21 (Whereupon, at 11:13 a.m., a luncheon recess was  
22 taken.)

23 MS. ROBESON: Good afternoon. This is the  
24 continuation of a hearing, a public hearing in the matter of  
25 Local Map Amendment G-892, an application filed by Chelsea



1 Residential Associates, LLC requesting a re-zoning of  
2 property from the R-60 to the RT-15 Zone for property  
3 located at 711 Pershing Drive, Silver Spring. The  
4 property's legal description is Lot 58, Evanswood, Section  
5 1.

6 Because not all counsel were here previously, I'm  
7 just going to recap for the record. We did convene the  
8 hearing as scheduled at 9:30. There was a conflict with one  
9 of the counsel at the Planning Board. We agreed to continue  
10 the hearing to 11. Unfortunately, Mr. Brown was still  
11 located at the Planning Board. We did grant an additional  
12 postponement request to 12:15. It's now 12:18. So we are  
13 reconvened on the public hearing.

14 I did mention at the 9:30 hearing for everyone's  
15 information that our office received the Planning Board  
16 recommendation late last evening. It is in the record of  
17 the case now but if anybody wants to review it, you're  
18 welcome to do so. We, this case will likely go in  
19 additional day at this point so I just wanted everybody to  
20 know that it is in the file. In addition, attached to the  
21 Planning Board recommendation was a letter from the Historic  
22 Commission that also is now in the file. I have not had the  
23 opportunity to review that letter. We just received that  
24 during the break so, you know, we are going to permit time  
25 to juggle the order of presentation at some point so that



1 all parties have the ability to review these documents and  
2 have adequate time for response.

3           There is one more document which was submitted  
4 into the record yesterday from a County Council person. He  
5 inadvertently, he was scrolling through a blog and  
6 inadvertently saw an article relating to this zoning case.  
7 He requested it to be placed in the public record. It is in  
8 the public record along with his request. So at this point,  
9 the parties are welcome to address any of those documents.  
10 We, it looks like we will have a backup date at this point  
11 and we will get into that later.

12           Now, because of the unanticipated delays this  
13 morning -- well, let me get to who's here for whom.  
14 Earlier, I asked a question. There are a number of people,  
15 and I don't know, sitting in the audience, and I don't know  
16 if people have, new people have come or less, fewer people  
17 have come but if you could give me a show of hands of anyone  
18 in the audience who wishes to testify that is not  
19 represented either by Mr. Brown or Mr. Harris. Okay. How  
20 many of those -- okay. For those of you who already  
21 identified yourself at the 11:00 time, is there anyone else  
22 that did not identify themselves for the record at the 11,  
23 when we convened at 11? Okay. I see three hands. You, do  
24 you wish to testify at the hearing?

25           UNIDENTIFIED SPEAKER: Yes.



1                   MS. ROBESON: Okay. What I'm going to do is this  
2 then. You have the right, you can present direct testimony,  
3 your own testimony. You also have the right to cross-  
4 examine witnesses. Mr. Brown is going to be putting on  
5 witnesses and Mr. Harris will be putting on witnesses.  
6 Because you're not represented by either side, I'm informing  
7 you that you have, if you have questions of any of the  
8 applicants or the opponent's witnesses, you have the right  
9 to question them on their testimony. That is not the time  
10 for you to testify. You will have a separate opportunity to  
11 testify.

12                   So I'm just letting you know that in advance so  
13 should the, should the question arise in your mind, you do  
14 have the opportunity to present it. You can designate a  
15 spokesperson to come sit at the table, so you do have, I  
16 wanted you to be aware of those options. At this time, do  
17 you have, do you wish to designate someone as a spokesperson  
18 or -- okay. For the record, I'm seeing people shake their  
19 head no. They don't wish to designate a spokesperson. Does  
20 anyone take issue with that? The reason I'm asking you this  
21 is that this proceeding is going to go up on a written  
22 record and so the type, when the Council reviews this case,  
23 they're not going to see people shake their heads so if we  
24 seem particular about certain things, it's because this goes  
25 up on a written record and we do ask for verbal responses,



1 all right?

2               This hearing is conducted on behalf of the County  
3 Council. My name is Lynn Robeson. I'm the Hearing Examiner  
4 which means that I'm going to take the testimony and  
5 evidence in this case. I will prepare a report and  
6 recommendation to the County Council who makes the final  
7 decision.

8               Just one word for those who are not familiar with  
9 the process, I know that Mr. Brown and Mr. Harris are amply  
10 aware of the process, but these proceedings are informal but  
11 they do have certain formalities. One of which is that all  
12 your testimony will be under oath and will be subject to  
13 cross-examination which means any of the, if you come to  
14 testify, the parties can ask you questions on your testimony  
15 just as you may ask them questions on their testimony. We  
16 also have an order of proceeding. If you have any  
17 questions, you can, regarding, you know, we ask that you  
18 stay within the order of proceeding. You will get an  
19 opportunity to testify.

20              The application must meet the requirements of the  
21 Zoning Ordinance. The requirements of the Zoning Ordinance  
22 are set out in the Technical Staff Report and you should  
23 address your testimony to those requirements.

24              I would like to, since we have all parties here  
25 now, I would like the parties again to identify themselves,



1 or the parties at the table to identify themselves for the  
2 record.

3 MR. HARRIS: Good afternoon. For the record, Bob  
4 Harris of Holland & Knight representing the applicant.

5 MS. ROBESON: Okay.

6 MR. BROWN: Good afternoon. David Brown of Knopf  
7 & Brown representing the Seven Oaks-Evanswood Citizens  
8 Association and two individuals in that neighborhood,  
9 Michael Gurwitz and Maria Schmit.

10 MS. ROBESON: Okay. And are there any other  
11 preliminary procedural matters before we begin the opening  
12 statements?

13 MR. HARRIS: I have two very brief things, Ms.  
14 Robeson. I have an Affidavit of Posting that I'd like to  
15 have admitted into the record.

16 MS. ROBESON: All right. Do you have any  
17 objection, Mr. Brown?

18 MR. BROWN: No.

19 MS. ROBESON: All right. This will be marked as  
20 Exhibit 107. No, 108.

21 MR. HARRIS: No. I was going to say there's --

22 MS. ROBESON: I'm sorry.

23 MR. HARRIS: And actually, before you do that,  
24 this document that is Montgomery County Planning Department,  
25 Scott Whipple, is identified as Exhibit 107.



1 MS. ROBESON: Correct.

2 MR. HARRIS: But 107 on the exhibit list is a May  
3 26 letter from Charles Wolff.

4 MS. VINCENT: That's because your list is not  
5 updated.

6 MR. HARRIS: Pardon?

7 MS. VINCENT: I just added that. Your list is not  
8 updated.

9 MR. HARRIS: Oh, so which is, which is 107? This  
10 says 10 but this says 107.

11 MS. VINCENT: You have the wrong list. Remember?

12 MS. ROBESON: Okay.

13 MS. VINCENT: It's 99 to 101.

14 MR. HARRIS: Oh, okay.

15 MS. ROBESON: Let's take a moment.

16 MR, HARRIS: All right. Fine. Oh, okay. I --

17 MS. ROBESON: This is just so you know --

18 MR. HARRIS: Thank you, Victoria.

19 MS. ROBESON: -- this is our administrative  
20 assistant, Victoria Boller Vincent so she'll get you a copy  
21 of the correct list.

22 MR. HARRIS: Fine.

23 MS. ROBESON: So I'm going to mark this as 108 and  
24 admit it into the record.

25 (Exhibit No. 108 was marked for



1                   identification and received into  
2           evidence.)

3                   MS. ROBESON: Any other preliminary matters?

4                   MR. HARRIS: A small matter, Ms. Robeson. When  
5   you were describing this letter, Exhibit No.107, a moment  
6   ago, I think you said that it came in today and that it was  
7   part of or attached to the Chairman's letter from the  
8   Planning Board, Exhibit No. 103. I don't believe that's the  
9   case. Exhibit 103 does not reference an attachment to it  
10   and I don't think it was attached to that. I think, rather,  
11   what it is is a memorandum that was submitted by the  
12   Historic Preservation Commission Staff to the Planning Board  
13   at the Planning Board hearing last week.

14                  MS. ROBESON: I thought I did see it referenced as  
15   an attachment.

16                  MR. BROWN: It's the last paragraph on the second  
17   page.

18                  MR. HARRIS: Last -- wait a minute.

19                  MS. ROBESON: Do you have Exhibit 103?

20                  MR. HARRIS: Yes. Was issued. Yes. I don't  
21   think it was attached to this.

22                  MR. BROWN: And accompanies.

23                  MR. HARRIS: Oh, and accompanies. Oh, okay. All  
24   right. I see.

25                  MS. ROBESON: Unfortunately, we do not have the --



1 MR. HARRIS: Yes. Okay.

2 MS. ROBESON: -- formal, the hard copy of the  
3 letter.

4 MR. HARRIS: Right.

5 MS. ROBESON: It did mention that it was attached.

6 MR. HARRIS: Okay.

7 MS. ROBESON: So we received and faxed electronic  
8 versions.

9 MR. HARRIS: I stand corrected. Thank you.

10 MS. ROBESON: All right. Anything else?

11 MR. HARRIS: No. I think that is it.

12 MS. ROBESON: All right. Do the parties wish to,  
13 Mr. Harris, do you want to make an opening statement?

14 MR. BROWN: I have just a couple of preliminary  
15 matters.

16 MS. ROBESON: Oh, I'm sorry.

17 MR. BROWN: First of all, as I advised Mr. Harris  
18 at lunchtime, I have great respect for his abilities and  
19 competence and I wanted him to know, in the interest of  
20 time, I would not be making any kind of voir dire with  
21 regard to his expert witnesses and I'm prepared, subject of  
22 course to your satisfaction, to stipulate to their  
23 qualifications.

24 MS. ROBESON: Very well. Thank you, Mr. Brown.  
25 Anything else?



1                   MR. BROWN: The other thing, I noticed that there  
2 are a couple of letters that were submitted to the Planning  
3 Board in conjunction with the hearing on this matter that  
4 have not been made exhibits and I wonder if they could be  
5 made exhibits. I have made copies of them.

6                   MS. ROBESON: Mr. Harris, do you have any  
7 objection?

8                   MR. HARRIS: May I see them, please?

9                   MR. BROWN: Yes.

10                  MS. ROBESON: Now, we did get some exhibits.  
11 People have been faxing and emailing so are you sure that  
12 they aren't already in the record? What are the names on  
13 the --

14                  MR. BROWN: One of them is testimony by Lorraine  
15 Pearsall from Montgomery Preservation, and the other is  
16 testimony from Montgomery County Civic Federation.

17                  MS. ROBESON: Okay. I do not see those in the  
18 record. Mr. Harris, do you have an objection?

19                  MR. HARRIS: Well, yes, I do for this reason.  
20 Throughout the preparation for this hearing, leading up to  
21 it, we've been advised that unsigned letters and emails are  
22 not admissible as evidence and they, in many cases, were  
23 returned to the individuals and in which case, we then went  
24 out and got signed letters. I don't believe either of these  
25 documents that are being proffered here is signed by the



1 person whose name is on it.

2 MS. ROBESON: I haven't seen them. Mr. Brown, can  
3 you please --

4 MR. BROWN: The copies that I made were made from  
5 copies of the testimony that were given to me personally by  
6 the two people that delivered the testimony. They may not  
7 have the official signor pages but I do have, I do have a  
8 photocopy of one of them with the signature of Lorraine  
9 Pearsall on it. I do not have Jim Humphries' signature page  
10 on his. I think it's an overly technical objection.

11 MS. ROBESON: Well, we are very strict about  
12 requiring signatures because of the verification of  
13 accuracy, Mr. Brown. Do you have any objection to -- what  
14 they can do is, and what we've been asking people to do, is  
15 simply sign them and resubmit them. I am going to hold the  
16 record, if for some reason we do finish today, I'm going to  
17 hold the record open for the parties to respond to the  
18 Planning Board report and the other documents that came in  
19 at the last minute so you would have the opportunity to  
20 resubmit them with the signatures on them.

21 MR. BROWN: All right.

22 MS. ROBESON: Any other preliminary matters?

23 MR. BROWN: Just one other item. I noticed that a  
24 copy of the Chelsea School's special exception opinion of  
25 the Board of Appeals is in your file but it's not an



1 exhibit. Does that make a difference because I would like  
2 it to be an exhibit.

3 MS. ROBESON: If it's in the file, it was done so  
4 simply because, for informational purposes for me and it  
5 must be inadvertently in the file. If you wish to make it  
6 -- it is not an exhibit in the record now so I, Mr. Harris,  
7 do you have an objection to the original opinion coming in?

8 MR. HARRIS: No, I don't. Actually, I was going  
9 to suggest, I suspect you can take official notice of the  
10 entire file in that proceeding just as you could the  
11 materials in ZHE cases, and you may want to do that as well.

12 MS. ROBESON: Do you have an objection to that,  
13 Mr. Brown?

14 MR. BROWN: As long as I can make reference to it  
15 in some way in this proceeding, I don't care how you handle  
16 it.

17 MS. ROBESON: Okay. What I would like to do is if  
18 there's a document that -- I will take official notice of  
19 the entire file, all right? What I would like to do is  
20 enter the opinion in the record as a specific exhibit  
21 because if we're going to be referring to it frequently,  
22 it's much easier just logistically that way.

23 MR. HARRIS: No objection.

24 MS. ROBESON: So do you have a copy?

25 MR. BROWN: I made several copies.



1                   MS. ROBESON: All right. So I'm going to mark  
2 that as Exhibit 9. Without objection, it's admitted. 109.

3                               (Exhibit No. 109 was marked for  
4 identification and received into  
5 evidence.)

6                   MR. BROWN: That's all the preliminary matters  
7 that I have.

8                   MS. ROBESON: All right. Mr. Harris, are you  
9 ready to proceed? You have the opportunity for opening  
10 argument.

11                  MR. HARRIS: I think we will waive opening  
12 arguments and try to get into the testimony here.

13                  MS. ROBESON: Very well.

14                  MR. HARRIS: Okay. As our first witness, I'd like  
15 to call Mr. Bob Youngentob.

16                  MS. ROBESON: Okay.

17                  MR. YOUNGENTOB: Thank you. For the record, my  
18 name is Bob Youngentob and I'm President of EYA. EYA is  
19 located --

20                  MS. ROBESON: Okay.

21                  MR. HARRIS: Hold on. She's got to swear you in.

22                  MR. YOUNGENTOB: I'm sorry.

23                  MS. ROBESON: Right. That's fine. Can you raise  
24 your right hand?

25                  MR. YOUNGENTOB: Absolutely.



1 (Witness sworn.)

2 MS. ROBESON: Okay. Go ahead.

3 MR. HARRIS: All right.

4 DIRECT EXAMINATION

5 BY MR. HARRIS:

6 Q Would you tell us your name, your business address  
7 and some of your background and experience?

8 A Sure. For the record, my name is Bob Youngentob  
9 and I'm the President of EYA. EYA is located at 4800  
10 Hampden Lane in Bethesda, Maryland. EYA has been in  
11 business for 19 years and we specialize in urban for sale  
12 residential development. My personal background, I've lived  
13 in Montgomery County since I was 13 years old, went to high  
14 school here, went off to college, was a banker for awhile  
15 and then I went back to Harvard Business School where I got  
16 an MBA, graduated in 1987 and moved back to the Washington  
17 Area after graduate school to begin a career in real estate.

18 I worked for the Holiday Corporation and JBG  
19 Associates for an initial one year period and then  
20 exclusively for the Holiday Corporation for an additional  
21 four years at which time in 1992, I left Holiday to co-found  
22 EYA with my partner, Terry Eakin. Ever since day one, you  
23 know, we specialized in what we referred to back then as  
24 urban residential. It's since --

25 MS. ROBESON: Let me stop you for one moment.



1 THE WITNESS: Sure.

2 MS. ROBESON: I apologize. Mr. Harris, are you  
3 going to qualify him as an expert or is --

4 MR. HARRIS: How perceptive. Yes, ma'am. I was  
5 going to have him qualified as an expert in urban infill  
6 development and building economics.

7 MS. ROBESON: Urban infill development and  
8 building economics.

9 MR. HARRIS: Yes.

10 MS. ROBESON: Okay. All right. Do you want to  
11 comment on that, Mr. Brown?

12 MR. BROWN: However Mr. Harris wants to get this  
13 testimony in is all right with me. We're not going to be  
14 quarreling over technicalities.

15 MS. ROBESON: I'll qualify him as an expert in  
16 urban land planning design. How's that? If I hear that in  
17 his testimony and also, real estate development finance.

18 MR. HARRIS: That works for us.

19 MS. ROBESON: Okay. Why don't you continue. I'd  
20 like to hear your background more, okay?

21 THE WITNESS: Sure. So again, I graduated in 1987  
22 from Harvard Business School and went right to work in the  
23 real estate industry, first for this five year combination  
24 between JPG and Holiday and then in the founding of EYA in  
25 1992. Since that time, we have exclusively focused on urban



1 residential development. We've completed over 27 different  
2 communities, over 3,000 individual homes in that period of  
3 time. We, as a company, have won more awards than any other  
4 local builder including a number of national awards. The  
5 ULI, which is the Urban Land Institute Award of  
6 Excellence --

7 MS. ROBESON: Okay.

8 THE WITNESS: -- for one of our projects as well  
9 as two America's Best Builder Awards where in both cases, we  
10 were recognized for our specialty in urban infill  
11 development.

12 MS. ROBESON: All right. Have you testified as an  
13 expert in other cases?

14 THE WITNESS: I don't believe I've testified as an  
15 expert in other cases. I have lectured at the Harvard  
16 Business School, I've lectured at University of Maryland,  
17 I've lectured at Catholic University, Montgomery College,  
18 Lehigh University, all on this particular specialty in this  
19 field.

20 MS. ROBESON: Okay. All right. I'll go ahead and  
21 qualify him.

22 THE WITNESS: Thanks.

23 MR. HARRIS: Thank you. I have two exhibits that  
24 I'd like to have him introduce relative to that.

25 MS. ROBESON: Okay.



1                   THE WITNESS: One is a listing of all the awards  
2 EYA has won since its inception.

3                   MS. ROBESON: Okay.

4                   THE WITNESS: And the second is basically a book  
5 of photographs and project descriptions of the various  
6 communities and their locations, the character of the  
7 architecture and the style that we have completed since our  
8 inception.

9                   MS. ROBESON: Okay. I'm marking the list of  
10 awards as Exhibit 110. Mr. Brown, do you have any  
11 objections?

12                  MR. BROWN: I don't see the relevance to this  
13 hearing but I don't mind them being in the record.

14                  MS. ROBESON: All right.

15                               (Exhibit No. 110 was marked for  
16 identification and received into  
17 evidence.)

18                  MS. ROBESON: And I will mark the booklet, the  
19 neighborhoods of EYA as 111. Mr. Brown?

20                  MR. BROWN: No objection.

21                  MS. ROBESON: Okay.

22                               (Exhibit No. 111 was marked for  
23 identification and received into  
24 evidence.)

25                  MS. ROBESON: Continue.



1           THE WITNESS: I'm just going to put up this  
2 particular -- this particular board just shows some of the  
3 examples, some of the photographs we've done. We've done a  
4 number of projects in Montgomery County. The one here on  
5 the lower left here is the National Park Seminary which  
6 is --

7           BY MR. HARRIS:

8       Q     Excuse me. Hold on a minute.

9       A     Sorry.

10      Q     Before you get into that --

11      A     Sorry.

12      Q     -- if we're going to introduce this, let's mark  
13 this as an exhibit if we may.

14           MS. ROBESON: Yes. Now, I'm going to ask you to  
15 physically mark it.

16           MR. HARRIS: Yes.

17           MS. ROBESON: Okay. So this would be 112. And  
18 how would you characterize that?

19           THE WITNESS: These are some photographs of the  
20 existing EYA communities, two of which are in Montgomery  
21 County, close proximity.

22           MS. ROBESON: Okay. This is photographs of  
23 existing EYA communities.

24           THE WITNESS: Communities.

25           MS. ROBESON: Mr. Brown, speak up if you have an



1 objection.

2 MR. BROWN: You won't hear many from me. No, no  
3 objection.

4 MS. ROBESON: Okay.

5 THE WITNESS: Thank you.

6 (Exhibit No. 112 was marked for  
7 identification and received into  
8 evidence.)

9 THE WITNESS: The lower left is a community called  
10 National Park Seminary which is actually approximately, I'd  
11 say two miles from the property that we're discussing today  
12 in Silver Spring. And this particular photograph is Cameron  
13 Hill, also in Silver Spring, which was one of the first  
14 privately-funded developments that helped shape the  
15 redevelopment of downtown Silver Spring.

16 National Park Seminary is relevant in that it was  
17 a very long, difficult project in the County because of the  
18 historic preservation elements and because we have historic  
19 preservation elements here on this site, we do have  
20 significant experience in this particular area. And in  
21 terms of style of housing and character, I think it does  
22 also have some similarities and also, its relationship to  
23 existing single-family homes in a neighborhood where the  
24 townhouses are built adjacent to the existing single-family  
25 homes and their compatible nature, so we wanted to introduce



1    them as well.

2                   There are a number of other historic preservation  
3    examples that EYA has been involved with, two of which I  
4    think are worth noting.    One is called the Bryant School,  
5    which is in the District of Columbia up on Capitol Hill  
6    where we renovated a historic elementary school and again  
7    developed row homes around the elementary school that was  
8    there.    And then also, in Hyattsville, we were involved in  
9    the renovation of the Lustine showroom as part of a large  
10   scale redevelopment where there are townhouses adjacent to  
11   existing single-family homes in the community in downtown  
12   Hyattsville.

13                  As I mentioned earlier too, we consider EYA really  
14   on the cutting edge of urban design and urban development.  
15   We were doing smart growth before the words smart growth  
16   were coined, and I know there's a lot of buzz in the  
17   community and in blogs and just in general from a planning  
18   standpoint about smart growth.   And our tag line of our  
19   company is life within walking distance and really, we only  
20   focus on communities that provide the elements of  
21   walkability in close proximity to, transit-oriented  
22   development, access to public transportation, access to  
23   retail.   And so we're proud of our track record and I think  
24   we've been called in to play, I know when the Shady Grove  
25   Master Plan was developed, the Planning Board actually



1 invited us in to help comment on the plan itself because of  
2 some of the smart growth elements that they were trying to  
3 incorporate into that plan.

4 I'll just skip to the next picture.

5 MS. ROBESON: Now, before you start, is this a  
6 separate exhibit here?

7 THE WITNESS: This will be -- I guess they could  
8 all be handled as one exhibit.

9 MS. ROBESON: Well --

10 THE WITNESS: There's a series of photographs.

11 MS. ROBESON: Okay. Then why don't you mark that  
12 112A.

13 THE WITNESS: A. Okay.

14 MS. ROBESON: And we'll just call it factors  
15 driving smart growth.

16 THE WITNESS: Perfect.

17 (Exhibit No. 112A was marked for  
18 identification.)

19 THE WITNESS: As we all know, or I shouldn't say  
20 as we all know, at least as I'm aware, Montgomery County is  
21 dealing with issues of growth every single day. We know we  
22 have budget shortfalls, we have issues dealing with trying  
23 to accommodate what appears to be an influx of population  
24 coming to the County over the next 20 years. I believe the  
25 housing element of the general plan which was recently



1 approved actually calls for the need for 75,000 additional  
2 new housing units over the next 20 years to accommodate  
3 approximately 155,000 new residents.

4 My belief is that you cannot stop growth because  
5 if we stop growing, you know, we're going to die and all  
6 these services, not die personally but die as a County, and  
7 all these services that we've come to, come to want and come  
8 to aspire to in Montgomery County, you know, quality of the  
9 education, quality of schools, quality of libraries, they  
10 need growth to continue to support that.

11 I mean, our costs of services continues to rise  
12 and without some new type of commercial development and  
13 residential development, we will not be able to sustain that  
14 level. And so everything that I read about what the  
15 Planning Board is trying to do, what the Governor of the  
16 State of Maryland is trying to do is to really focus people  
17 on looking at smart growth opportunities, and this is  
18 relevant in terms of how we got involved in this particular  
19 location.

20 The other thing that's happening is that there are  
21 demographic changes occurring in the population. We know  
22 the baby boomers are aging, they're looking for changes in  
23 lifestyle. There are younger populations that are coming in  
24 and the whole idea of people wanting to live closer in,  
25 tired of paying \$4.50 gas prices, wanting to take advantage



1 of shorter commutes, walking to amenities like restaurants  
2 and grocery stores and things like that has really become a  
3 shift across the entire United States.

4 Not to say that there aren't still people who view  
5 the American Dream as the single-family home out in the  
6 suburbs. There is as big a population there as there is, I  
7 think, of people who want to get in closer, and I think  
8 Montgomery County has made a decision that for us to  
9 preserve the agricultural reserve and things that really  
10 mean so much to the history of the County, the Wedges &  
11 Corridors plan, that we need to concentrate growth in our  
12 urban corridors and our urban locations.

13 So the combination of the demographic changes as  
14 well as these consumer preference changes has really, I  
15 think, created a need for more and more of this type of  
16 development and I think that's been recognized by, again, by  
17 the Governor as well as a lot of the planning documents you  
18 see throughout Montgomery County and throughout this region.

19 If we can go to the next slide, we can mark this  
20 as 112 --

21 BY MR. HARRIS:

22 Q 112B.

23 A -- B.

24 (Exhibit No. 112B was marked for  
25 identification.)



1                   THE WITNESS: I'd like to get into a little bit of  
2 the history --

3                   MS. ROBESON: And that's going to be Chelsea  
4 history.

5                   MR. HARRIS: Right.

6                   THE WITNESS: Chelsea history, correct. Just by  
7 way of background, this particular location has been the  
8 site of a school since the 1930s. It was originally the  
9 home of the Academies of the Holy Names. The current  
10 buildings on the site, except for the --

11                  BY MR. HARRIS:

12                  Q     Riggs-Thompson

13                  A     -- the Riggs-Thompson house, thank you, were built  
14 in the 1950s and Chelsea actually became a tenant of the  
15 property, I believe it was in 1989. They operated as a  
16 tenant under the auspices of the use provisions that Academy  
17 of the Holy Names had because obviously, religious  
18 institutions are exempt from special exceptions but when  
19 they decided to purchase the property in late 19, I believe  
20 97/98, they had to go through a special exception process  
21 which is the reference to the special exception file that  
22 Mr. Brown mentioned earlier. And that hearing went on, I  
23 believe, for four days, you know. Just weaving through the  
24 file myself, my sense was that it was somewhat contested  
25 back at that point and some of the issues that were raised.



1                   And so what has since happened is the Chelsea  
2 mission is they serve special needs children and originally,  
3 many of those special needs children came from the  
4 Montgomery County area. Over time, their population became  
5 less and less focused on Montgomery County because  
6 Montgomery County actually took in many of the special needs  
7 children themselves and started to serve them within the  
8 Montgomery County Public School System. And so therefore,  
9 Chelsea ended up becoming focused on both Prince George's  
10 County children and on District of Columbia children.

11                  The Board had gone through a series of meetings  
12 and decisions about, you know, trying to achieve their  
13 mission in the most economical, most viable way and reached  
14 a point where they decided to relocate into actual schools  
15 or other locations within both Prince George's County and  
16 the District and decided to sell this property. They made  
17 that decision independently, they hired a consultant who  
18 then started to talk to them about various alternatives of  
19 what could happen on this site.

20                  One of the alternatives was for them to sell to  
21 another school because even though they were only operating  
22 at approximately 90 students as at this time now, the  
23 special exception that was approved back in 2000 actually --  
24 and the reality is a 90 person school is really uncommon in  
25 today's kind of school. I don't claim to be an expert on



1 schools but I am on the Board of the Maret School in the  
2 District and it's very difficult, given school operations,  
3 to function at a 90 person level. And so, you know, they  
4 were really talking about going back to the original density  
5 of 200 students as approved under the special exception and  
6 also were aware that if they went back to a parochial  
7 school, that that special exception wouldn't be limited to  
8 the 200 but they could go back to the original potential  
9 density of school children per acre as the way it's  
10 calculated in Montgomery County.

11 So they were also looking for other alternatives  
12 for the site and I'd like to reference a letter dated  
13 October 1st, 1999 which was actually submitted to Chairman  
14 Hussmann at the time of the Montgomery County, when he was  
15 Chair of the Montgomery County Planning Board.

16 MS. ROBESON: Is that in?

17 THE WITNESS: Oh, sorry.

18 MR. HARRIS: No.

19 THE WITNESS: No.

20 MS. ROBESON: Okay. I'm going to mark this as  
21 Exhibit 113. An October 15th, '99 letter from Susan  
22 Turnbull.

23 MR. HARRIS: To.

24 MS. ROBESON: To Susan Turnbull.

25 THE WITNESS: I'm sorry. Sorry. Correct.



1 (Exhibit No. 113 was marked for  
2 identification.)

3 THE WITNESS: And basically, what this consultant  
4 and what we became focused on were some of --

5 MS. ROBESON: Before you continue, just out of an  
6 abundance of caution, Mr. Brown, do you want to just, should  
7 I assume if you're silent you don't have an objection?

8 MR. BROWN: No. I would appreciate it if you  
9 would ask me exhibit by exhibit.

10 MS. ROBESON: Okay.

11 MR. BROWN: And in this case, I object to the  
12 exhibit. I don't think --

13 MS. ROBESON: And your basis?

14 MR. BROWN: I don't think that the issues  
15 associated with accommodating this particular school on this  
16 particular site over 10 years ago has any relevance to the  
17 issues you need to decide today or in this proceeding.

18 MS. ROBESON: And why not because I haven't had  
19 the chance to read this.

20 MR. BROWN: Because we are not dealing with the  
21 school. We are dealing with townhome development on the  
22 property.

23 MS. ROBESON: Mr. Harris?

24 MR. BROWN: And we will --

25 MS. ROBESON: I'm sorry.



1           MR. BROWN: And if necessary, we will have  
2 testimony from the citizenry that over the past 10 years,  
3 the concerns that were expressed in these letters about  
4 whether the school would be a good neighbor turned out to be  
5 unfounded and the school was a good neighbor. They're just  
6 nonissues in this case.

7           MR. HARRIS: I disagree completely. I think the  
8 issues are significant. At the Planning Board, a great deal  
9 of the testimony from the residents objecting to the re-  
10 zoning was about how good a neighbor the school is which  
11 belies the statements in this letter. This letter also is  
12 in the record in the special exception case which you've  
13 agreed to take official notice of but as you indicated  
14 earlier, it would be useful to have identified and admitted  
15 as exhibits documents that are specifically referenced in  
16 the testimony. You'll see in this letter that there are  
17 very specific complaints about the school, both as it  
18 existed at the time and as it was proposed to be expanded.

19          MS. ROBESON: Well, I'm not sure how relevant it is but  
20 I am going to admit it and give it the weight it deserves,  
21 and that would be 114, I mean 113.

22                           (Exhibit No. 113 was received into  
23 evidence.)

24          MS. ROBESON: Okay.

25          MR. HARRIS: Thank you.



1 MS. ROBESON: Go ahead.

2 BY MR. HARRIS:

3 Q Continue.

4 A I'd like to reference I think it's item no. 1  
5 which would be part of paragraph 3 where a number of items  
6 are enumerated, and at least it was relevant to me because  
7 again, in conversations with the community and some of the  
8 testimony that we heard at the Planning Board, there were a  
9 number of concerns about the fact that people felt that the  
10 existing homes on Chelsea, which are special exception  
11 office use and single-family special, they were already the  
12 buffer for, for the downtown CBD and therefore, no  
13 additional buffer was needed. And one of the premises that  
14 we do believe and related to the relationship of RT-15 is  
15 that transitional townhouses are one of the, one of the  
16 findings potentially.

17 So the force point is that the site, they  
18 reference the point that the site is a very sensitive one  
19 for the community as it is the buffer area between the  
20 intense development of the Silver Spring CBD and the single-  
21 family residential community, so they do reference the  
22 entire block as the buffer area as opposed to just the row  
23 of single-family homes on Cedar Street.

24 Secondly, the fact that in paragraph two or no. 2,  
25 the existing facilities seriously adversely impact the



1 nearby houses aesthetically as well as by the intensity of  
2 the operations. In paragraph four, the existing main  
3 educational building is three stories in height, over 100  
4 feet long, has virtually no landscaping in the front and  
5 thus dominates Springvale Road, a very narrow street which  
6 the building confronts. This is incompatible with the  
7 relatively modest homes on the opposite side of the street.

8 And I reference that in that, you know, in our approach to  
9 work with the community and to design the site, we try to  
10 look at each of these issues and try to address and create a  
11 site plan that was much more respectful of the residents  
12 across the street than the existing school.

13 And then also, confronting Springvale Road is a  
14 second existing building, a one-story gymnasium which is 60  
15 feet long, and this is paragraph five. This building  
16 aesthetically, as well as its steps and main entrance into  
17 the gymnasium from Springvale and all the traffic activity  
18 is generated at this entrance adds to the noncompatible  
19 condition. And again, as we get into our plan, you'll see  
20 we did not locate any vehicular access on Springvale Road  
21 and tried to really focus the traffic in other areas so  
22 again, we were trying to design something that would be far  
23 more compatible than the issues that they have referenced  
24 here.

25 The last issue is further compounding the adverse



1     impact, this is paragraph seven, on Springvale Road is the  
2     existence of another building that does not have a  
3     residential character to it at the corner of Springvale Road  
4     and Springvale and Springvale Street. And again, part of  
5     our goal in developing a plan for this was to create  
6     something of a very consistent residential character, even  
7     in the form of townhouses, and I'll get into that in a  
8     second.

9             So Chelsea approached EYA and, you know, we had,  
10    we were not aware of the site when they approached us. The  
11    last thing I want to mention too here is at the intersection  
12    of Chelsea, of Springvale and Pershing is currently, there's  
13    really no bus pull-off area. There's a small kind of  
14    indentation in the curb.

15            MS. ROBESON: Okay. For the record --

16            THE WITNESS: Yeah.

17            MS. ROBESON: -- you're looking at --

18            THE WITNESS: Referencing --

19            MS. ROBESON: -- the lower, the lower photograph  
20    on 112B.

21            THE WITNESS: Correct.

22            MS. ROBESON: And what is that a picture of?

23            THE WITNESS: It's a picture of the school buses  
24    staging on Pershing and Springvale basically waiting for  
25    either the drop-off, dropping off students or waiting for



1 the pickup in the afternoon where the buses are. And in  
2 discussions that we had with Chelsea, it was, it was our  
3 understanding that this was still of a significant concern  
4 to the community. These buses idle, they sit out here, they  
5 do create somewhat of a traffic hazard. We --

6 UNIDENTIFIED VOICE: Do you want --

7 THE WITNESS: Sure.

8 UNIDENTIFIED VOICE: 112C.

9 THE WITNESS: 112C.

10 MS. ROBESON: Okay. Can you mark it as 112C?

11 THE WITNESS: Yes. I will.

12 MS. ROBESON: And we'll call it existing  
13 conditions.

14 THE WITNESS: Right.

15 MS. ROBESON: Chelsea School existing conditions.

16 Mr. Brown?

17 MR. BROWN: No objection.

18 MS. ROBESON: Okay.

19 (Exhibit No. 112C was marked for  
20 identification and received into  
21 evidence.)

22 MS. ROBESON: Okay.

23 THE WITNESS: And so just, you know, the traffic  
24 configurations, the operations of a school in this area that  
25 has, I don't want to call them substandard streets but



1 they're clearly not streets that meet the current road code.  
2 They don't have sidewalks on some of the frontages and so  
3 it is a very congested area and one that I do think  
4 potentially creates some unsafe conditions and that's where  
5 I know Chelsea is concerned about their operations and how  
6 it relates to the community.

7 The other photographic exhibits will be 112D which  
8 is just some other images looking around the perimeter of  
9 the site, looking down Springvale Road. This is the  
10 entrance.

11 MS. ROBESON: Okay.

12 THE WITNESS: Yeah. I'm sorry.

13 MS. ROBESON: Hold on. This is 112D.

14 THE WITNESS: Right.

15 MS. ROBESON: And this is existing conditions  
16 Pershing and Springvale?

17 THE WITNESS: Correct.

18 MS. ROBESON: Okay. Mr. Brown, any objection?

19 MR. BROWN: No objection.

20 MS. ROBESON: Okay. It's admitted.

21 (Exhibit No. 112D was marked for  
22 identification and received into  
23 evidence.)

24 THE WITNESS: So it does show that there is a  
25 sidewalk adjacent to the Riggs-Thompson house today at



1 Pershing but as you look down Springvale Road and you see  
2 the hedge and the larger building in the photo up in the  
3 upper right, you can see the sidewalk disappears and kind of  
4 goes down the street. Again, the lower right-hand side  
5 shows the entrance to the building referenced in the letter  
6 about having this be an entrance and significant drop-off  
7 activity, and no sidewalk as you go down Springvale Road and  
8 the relatively narrow nature of the road.

9               Next set of photographs will be Exhibit 112E. And  
10 this is some additional photographs of Springvale Road and  
11 Ellsworth Drive.

12               MS. ROBESON: Okay. So this is 112E is existing  
13 conditions Springvale Road and Ellsworth Drive. Okay. Go  
14 ahead. Do you have any objections?

15               MR. BROWN: No objection.

16               MS. ROBESON: I'm sorry.

17                               (Exhibit No. 112E was marked for  
18 identification and received into  
19 evidence.)

20               MS. ROBESON: Go ahead.

21               MR. BROWN: So the picture on the upper left  
22 actually shows today a curb-cut entrance and there's --  
23 curb-cut is a general term because there are no curbs along  
24 there but it is an entry drive into the surface parking lot  
25 that exists along Springvale and into the Ellsworth Road



1 area. Again, you know, from a compatibility standpoint, one  
2 of the things we were looking at is, you know, how to  
3 eliminate, you know, some of that extensive paving and  
4 surface parking lot and the fact there are no sidewalks.

5 And I think one of the things we heard from the  
6 community in meetings was this great desire, because they  
7 also want to live adjacent to this incredible downtown and  
8 Whole Foods and the Metro, having pedestrian access and  
9 making that pedestrian access as friendly and accessible as  
10 possible, you know. At least my experience is that  
11 situations that have sidewalks as opposed to being forced to  
12 walk in narrow roads is actually a safer and better  
13 environment. So that's it on the photographs of Chelsea.

14 So when we were approached, you know, like other  
15 sites, we looked at the property, we looked at the history,  
16 we looked at the issues associated with, with this  
17 particular site and back in February of 2010, we had some  
18 very initial meetings with the former President of SOECA,  
19 Mark Gabriel. In those meetings --

20 MS. ROBESON: Okay. If he --

21 THE WITNESS: I'm sorry.

22 MS. ROBESON: Let's mark that.

23 THE WITNESS: Sorry.

24 MS. ROBESON: This is Exhibit 114, community  
25 outreach.



1 UNIDENTIFIED SPEAKER: Do you want to keep it to

2 112 or --

3 MS. ROBESON: Okay. 112F.

4 THE WITNESS: F. F. Sorry.

5 MS. ROBESON: EYA. EYA.

6 THE WITNESS: EYA.

7 MS. ROBESON: EYA community outreach.

8 (Exhibit No. 112F was marked for  
9 identification.)

10 MS. WARREN: Can we object?

11 MS. ROBESON: Are you represented by either  
12 attorney?

13 MS. WARREN: No. We're representing ourselves.

14 MS. ROBESON: Okay. You can come forward and  
15 state your name and address for the record, all right? Can  
16 you  
17 come, I have two extra chairs here.

18 MS. WARREN: Here?

19 MS. ROBESON: That's fine. Please --

20 (Discussion off the record.)

21 MS. WARREN: I just wanted to object to a couple  
22 things.

23 MS. ROBESON: Well, first state --

24 MS. WARREN: Okay. My name is Vicki Warren.

25 MS. ROBESON: And your address?



1 MS. WARREN: 503 Pershing Drive.

2 MS. ROBESON: Okay. Now, this is -- all we're  
3 doing here is saying is there any reason to believe that  
4 those photos aren't accurate, that there's a legal reason  
5 why they shouldn't, are they irrelevant. You will get a  
6 separate turn to testify or you can have a separate turn to  
7 cross-examine about these exhibits. Okay.

8 MS. WARREN: Okay. I want to object to the one of  
9 all the buses on Pershing Drive.

10 MS. ROBESON: Now, let's -- well, those are  
11 already admitted.

12 MS. WARREN: Okay. I didn't know we could object  
13 then so sorry. So I'll just testify against it then when I  
14 testify.

15 MS. ROBESON: Well, what was the basis of your  
16 objection?

17 MS. WARREN: Those buses aren't supposed to be  
18 there. As part of the special exception that Chelsea School  
19 got, the buses were supposed to come in and out on  
20 Ellsworth. That was part of the special exception.

21 MS. ROBESON: Okay. That probably -- do you  
22 dispute that the buses are there or that --

23 MS. WARREN: I dispute that the buses are there  
24 now. That was, that's from a different time period when the  
25 buses were there more often.



1 MS. ROBESON: Okay. So you're objecting as to the  
2 relevance.

3 MS. WARREN: I'm objecting to the relevancy of  
4 using buses on Pershing Drive as part of a community being  
5 against the school.

6 MS. ROBESON: Okay.

7 MS. WARREN: Because number one, the buses --

8 MS. ROBESON: I understand --

9 MS. WARREN: Yeah. The buses aren't supposed to  
10 be there and number two, they've been dwindling over time as  
11 the students dwindle at Chelsea.

12 MS. ROBESON: Okay. I am going, I'm going to note  
13 your objection.

14 MS. WARREN: Okay.

15 MS. ROBESON: I do think it has some relevance to  
16 the proceeding. I'm going to let it in. When you, when  
17 it's your turn to testify, you're free to say that and  
18 you're also free to cross-examine the witness on that issue.

19 MS. WARREN: Okay. And the sidewalks too?

20 MS. ROBESON: Now, cross-examination is questions  
21 of the witness.

22 MS. WARREN: Okay. Can, the sidewalks too because  
23 the sidewalks were also part of the special exception --

24 MS. ROBESON: Yes.

25 MS. WARREN: -- that Chelsea was supposed to put



1 in. They just didn't do it.

2 MS. ROBESON: The only issue we're dealing now is  
3 with whether that, those photographs should come in.

4 MS. WARREN: Okay.

5 MS. ROBESON: I am going to let them in because --

6 MS. WARREN: Okay.

7 MS. ROBESON: -- I do think they have some  
8 relevance --

9 MS. WARREN: Okay.

10 MS. ROBESON: -- to the criteria. You are free to  
11 ask questions or when it's your turn to testify, you can  
12 make those statements.

13 MS. WARREN: Okay. Thank you.

14 MS. ROBESON: I'm sorry. This is EYA Community  
15 outreach and it's going to be admitted. Mr. Brown, did you  
16 have an objection? I'm not sure we got to you on this 112F,  
17 E. 112E.

18 MR. BROWN: I'd like some kind of proffer as to  
19 what these pictures purport to represent.

20 THE WITNESS: They're just evidence of the process  
21 that we went through and the community outreach. This was  
22 actually, these were photographs of an open house that was  
23 well-publicized in the community that was open to everybody  
24 just to explain again, you know, what was happening, how the  
25 plan had changed after a series of community meetings.



1 MS. ROBESON: I understand. I'm not sure how  
2 relevant the community outreach is to the criteria but I am  
3 going to let it in. Okay. Now, is that E? That should  
4 be --

5 MR. HARRIS: That should be F. I just corrected  
6 it.

7 THE WITNESS: F.

8 MS. ROBESON: Okay.

9 MR. HARRIS: Yes.

10 MS. ROBESON: Thank you.

11 MR. HARRIS: Yes, ma'am.

12 THE WITNESS: Sorry.

13 (Exhibit No. 112F was received into  
14 evidence.)

15 THE WITNESS: Just by I guess reference to one of  
16 the earlier exhibits with regard to the question of the  
17 buses, can I clarify as to when that photograph was taken?  
18 Would that be helpful or --

19 MS. ROBESON: Why don't you -- I'm going to let  
20 your -- you may clarify that, yes.

21 THE WITNESS: The photograph was taken last week I  
22 believe so just it's very recent.

23 MS. ROBESON: Okay.

24 THE WITNESS: Last Wednesday.

25 MS. ROBESON: Now, all right. Okay. Continue.



1                   THE WITNESS: Sure. I guess the only point of  
2 putting this up was to talk a little bit about the community  
3 process that we did go through. There was a series of --  
4 there's initial indications of a willingness to consider the  
5 concept that we had been presented from the previous  
6 President of SOECA. We did proceed then to meet, I believe  
7 it was three different times, with the broader SOECA  
8 Association in their community meetings as well as have a  
9 series of meetings with other members of the community, both  
10 in private homes and at the historic Riggs-Thompson house.

11                   We recognized, once we started meeting with SOECA  
12 as the Association and Mr. Gabriel was no longer the  
13 president, that there was opposition to what we were  
14 proposing. There, at the same time, there were a number of  
15 people that came out in support of what we were proposing  
16 and felt actually that this was a better use for the  
17 neighbors and for the community than the existing school use  
18 or the potential of another school going back to the  
19 original 200 student population.

20                   The project, as we went through that process, one  
21 of the things we did do was we submitted this, the design  
22 and the concept for this location to the Smart Growth  
23 Coalition and the Coalition for Smarter Growth. These are  
24 organizations that are comprised of the Urban Land  
25 Institute, the Chesapeake Bay Foundation and other



1 environmentally sensitive groups who actually awarded this  
2 particular project with their smart growth recognition and  
3 actually came and testified on behalf of the merits of this  
4 particular site as a smart growth design. And their only  
5 concern was that it actually wasn't dense enough in terms of  
6 the number of units that were being proposed.

7           So the next exhibit will be Exhibit 112G, and this  
8 also contributed to at least our --

9           MS. ROBESON: Just a second.

10          THE WITNESS: Sorry.

11          MS. ROBESON: Mr. Brown, why don't you do this.  
12 We'll mark it as 112G and you describe what it is and then  
13 I'll ask Mr. Brown for any objection.

14          THE WITNESS: Sure.

15                   (Exhibit No. 112G was marked for  
16 identification.)

17          THE WITNESS: This is an aerial photograph of the,  
18 of the general downtown CBD as well as the subject property,  
19 the area around Cedar Street and then going back into the  
20 single-family neighborhood adjacent to Woodside Parkway,  
21 Colesville Road and portions of Seven Oaks-Evanswood  
22 neighborhood.

23          MS. ROBESON: Mr. Brown, any objection?

24          MR. BROWN: Well, it's their perspective. I guess  
25 they're entitled to it. No objection.



1 MS. ROBESON: All right. So it will be 112G,  
2 neighborhood, aerial of neighborhood context.

3 (Exhibit No. 112G was received into  
4 evidence.)

5 THE WITNESS: The reason why -- this was one of  
6 the things that we looked at when we were evaluating the  
7 site and trying to determine from our experience of smart  
8 growth development and residential development whether or  
9 not something that we were thinking about doing would be  
10 compatible and would be something that would be appropriate  
11 for this location and as we looked at the property, one of  
12 the things we obviously clearly saw was some of the elements  
13 adjacent to the site.

14 You obviously have an urban park here, the  
15 Ellsworth Park, you have an institutional use of the  
16 Montgomery County Silver Spring Library, and these are  
17 directly across the street from the subject property on  
18 Ellsworth Drive as well as Colesville Towers. And just to  
19 give a sense of the variety and density, Colesville Towers  
20 is developed at 220 dwelling units per acre.

21 Going to the other side of the site on Pershing,  
22 there's clearly R-60 single-family homes in this area. Some  
23 of the single-family homes on Cedar Street are special  
24 exception offices and the majority of them are individual  
25 single-family homes but as you go across Springvale and



1 Pershing, there's actually another special exception, the  
2 Springvale Terrace senior housing which is developed at 58  
3 dwelling units per acre. You have single-family homes  
4 directly across Springvale Road and then across Cedar going  
5 into downtown, you have the new downtown residential  
6 development that's under construction now, which is being  
7 developed at approximately 112 units per acre, the new civic  
8 building, the Whole Foods, the Silver Spring Metro, the  
9 location of the potential future purple line.

10           And, you know, I guess our reaction to this was  
11 that in many ways, this was textbook from the potential  
12 opportunity for a redevelopment. It was a single user. It  
13 wasn't an assemblage of large amounts of single-family  
14 houses. This was an existing institutional use that had not  
15 been identified with a specific recommendation in the master  
16 plan except for the R-60 single-family and the special  
17 exception that was in place, and based on our experience in  
18 working in Montgomery County, knowing that RT Zones exist as  
19 floating zones and could be applied at appropriate  
20 locations, this made perfect sense to us. And it was  
21 exactly speaking to the policy decisions and policy  
22 directions that we had been hearing from the Montgomery  
23 County Planning Board, Planning Staff, the County Council,  
24 many of the County Council, I won't speak for all of them  
25 but in terms of some of their policies that they had set out



1 with regard to trying to find new opportunities for  
2 residential development in close proximity to the downtown.

3 So the next exhibit, and I'm not going to get into  
4 a lot of detail of the plan.

5 MS. ROBESON: Now, is this the same series or this  
6 is -- I'd like to start a new series on this one.

7 THE WITNESS: That's fine.

8 MS. ROBESON: So we're at 114 I think because I  
9 have 113 is the letter to Susan Turnbull. So if you could,  
10 this will be 114, Chelsea Court plan.

11 (Exhibit No. 114 was marked for  
12 identification.)

13 MS. ROBESON: Mr. Brown, do you have an objection?

14 MS. WARREN: Can I object?

15 MS. ROBESON: I'm sorry. I couldn't see who that  
16 was. Is there an objection from anyone in the rear? Okay.  
17 Come forward again.

18 MR. BROWN: I would just like a proffer that this  
19 is intended to replicate the latest version of the schematic  
20 developments.

21 MS. ROBESON: All right. That's fine.

22 MS. WARREN: Okay. Do I need to state my name  
23 again?

24 MS. ROBESON: Yes, please.

25 MS. WARREN: Okay. My name is Vicki Warren. I'm



1 at 503 Pershing.

2 MS. ROBESON: Okay. We just need your name now,  
3 not your address.

4 MS. WARREN: Okay.

5 MS. ROBESON: So they know who the voice is.

6 MS. WARREN: I just wonder about the relevance.

7 If we just learned from the Historical Commission that that  
8 road cannot come through on Pershing, what's the relevance  
9 of this schematic?

10 MS. ROBESON: Well, I think it is relevant because  
11 it is the applicant's most recent plan as part of the  
12 application, so I understand your point and that is a  
13 question you can either ask the witness on cross-examination  
14 or --

15 MS. WARREN: Okay.

16 MS. ROBESON: -- bring out in testimony.

17 MS. WARREN: Okay.

18 MS. ROBESON: All right?

19 THE WITNESS: Okay.

20 MS. ROBESON: Continue.

21 THE WITNESS: Sure. So this represents, how did  
22 you refer to it, the most, a recent representation of the  
23 most recent schematic development plan. Okay. And  
24 basically, what it shows is 76 new townhomes and the 77th  
25 unit would be the Riggs-Thompson, the preservation of the



1 Riggs-Thompson house. Included in the 76 new townhomes,  
2 we're proposing 10 MPDUs.

3           There's been a number of characterizations in the  
4 previous testimony of this being massive density and the  
5 actual density that's being proposed here is 14, I believe  
6 it's 14.67 units per acre and, you know, given the 220 units  
7 per acre at this location and the 58 units per acre at this  
8 location and 112, and even in my experience at EYA and in  
9 other residential situations, the characterization of  
10 massive density at 14.67, most of our other townhome  
11 developments that we've done throughout the region are  
12 actually built at more higher densities than 14.67.

13           The average density that we build at in townhome  
14 communities throughout the Washington area is closer to 25  
15 to 30 units per acre as opposed to 14.67 so we felt we were  
16 being very sensitive actually to this transitional use of,  
17 of being adjacent to single-family homes and therefore,  
18 wanted to come in with a lower density than even close,  
19 anywhere close to what our historic average is of what's  
20 been recognized. And that was honestly one of the concerns  
21 that the Smart Growth Coalition had when they recognized  
22 this as a smart growth project but felt that maybe the  
23 density was too light but it was clearly not, in our eyes or  
24 their eyes, as massive density.

25           The preservation of the Riggs-Thompson house I



1    talked about. We actually think that one of the problems  
2    today of the site is because the Riggs-Thompson house is so  
3    impacted by the existing school buildings that you really  
4    don't get a flavor for the setting and feeling of what the  
5    Riggs-Thompson house historically was or what should be and  
6    therefore, in our design, we removed the existing school  
7    buildings except for the historic structure.

8                    There is some question as to the exact footprint  
9    of the existing building. We're continuing to work with the  
10   Historic Preservation Staff on the definition of that.  
11   We've had a historic architect that we've worked with in the  
12   past, Martinez & Johnson, look at the building. They felt,  
13   at least originally, this represented the historic footprint  
14   but to the extent it doesn't, then we will modify the  
15   footprint and continue to work with the Historic  
16   Preservation staff to accommodate their perception of what  
17   that is and work with them to -- and there has been no final  
18   ruling with regard to the location of the road.

19                   We haven't been actually before the Historic  
20   Commission. We've only been working with the staff members  
21   who have raised these objections and we do think that  
22   there's flexibility and there's also, I think, multiple  
23   opinions coming out of the Planning Board or Planning staff  
24   as to the potential location of the road that goes through.  
25   But our rationale for putting the road through was really



1   that, you know, in working with the community, they were  
2   very sensitive to traffic concerns and they didn't want any  
3   access out onto Springvale. We wanted to have access at two  
4   points, both on Ellsworth and on Pershing and therefore,  
5   located the road where we did.

6               The site itself is a unique site in that it  
7   actually slopes approximately 40 feet from a low point at  
8   Ellsworth up to Pershing and Springvale and so what we've  
9   done from a design standpoint is to actually terrace the  
10   units into the hill and step the units down as you go across  
11   the property from the high point down to the low point.

12              The other thing that we were very sensitive to was  
13   the relationship to the existing single-families across  
14   Springvale and therefore, rather than lining townhouses  
15   across Springvale with a very long row, similar to what the  
16   school represents today in terms of this 100 foot lane of  
17   three-story height, we actually broke up the elevations with  
18   just six individual units facing the single-family homes on  
19   Springvale and then treated those individual facades as  
20   though they were single-family homes with the entrances on  
21   those units facing the entrances across Springvale.

22              I'm going to reference I guess Exhibit 114A for a  
23   second because this is an architectural exhibit that speaks  
24   to that particular point. It has an example of where we've  
25   done that previously. This is, so this is 114A.



1 MS. ROBESON: Okay. Before you continue, Mr.  
2 Brown, do you have an objection?

3 MR. BROWN: No objection.

4 THE WITNESS: Thank you.

5 MS. ROBESON: So that will be architectural, 114A,  
6 architectural character Chelsea Court.

7 (Exhibit No. 114A was marked for  
8 identification and received into  
9 evidence.)

10 MS. ROBESON: Okay. Continue.

11 THE WITNESS: So the picture at the lower right of  
12 this particular exhibit is actually a home that we built in  
13 Arlington County in the Clarendon community where again,  
14 what we did is we took a townhouse that's part of a string  
15 that runs perpendicular to a road, just like at Springvale,  
16 adjacent to single-family homes and put a front porch and a  
17 front door opposite those single-families and addressed this  
18 just like it was a single-family home, and that was exactly  
19 the technique that we had proposed to the community and  
20 incorporated into the plan. Just to go back to 114 for a  
21 quick second.

22 MS. ROBESON: Certainly.

23 THE WITNESS: Which is the site. The other things  
24 that I wanted to mention in terms of compatibility, because  
25 I know compatibility is one of the key tests within the RT-



1 15, is that we were really sensitive to traffic, we were  
2 sensitive to open space and the pedestrian connectivity and  
3 so as part of the schematic development plan, we've actually  
4 proposed the creation of two large green areas, both, one at  
5 Ellsworth opposite Ellsworth park and the existing library  
6 that would have public access easements over those areas, be  
7 accessible to the public as additional open space, as  
8 additional community open space. They would be maintained  
9 by the homeowners association but through the public access  
10 easements, would be fully accessible to the community.

11 I know there's been some testimony and letters  
12 written that, you know, these are required elements and that  
13 they would have no availability to the community and that's  
14 absolutely not true. Because of the proffer of a public  
15 access easement over these areas, they would definitely be  
16 accessible to the community as well as the area located  
17 across Springvale and Pershing as well.

18 The other thing that we have proffered that's made  
19 part of the plan is continuing the sidewalk network that  
20 currently exists around the Riggs-Thompson house all the way  
21 down Springvale and along Ellsworth and creating a much  
22 better pedestrian connectivity for everybody who lives in  
23 the community to the, I guess it would be to the north.

24 And so today, you know, it's, we've heard issues  
25 about safety and darkness as people walk home from the Metro



1 at night in the winter, you know, the fact that it's a  
2 school building that's not used a lot on the weekends,  
3 there's no activity on the property and therefore,  
4 sometimes, it has been the issue, been a concern of some  
5 residents in terms of safety. By having houses that  
6 actually face out onto the open space, face out onto the  
7 streets in all locations, we're creating what is referred to  
8 as eyes on the street which in all urban redevelopment  
9 scenarios is one of the most important elements of creating  
10 a safer pedestrian environment where you have front doors,  
11 you have residents, you have bedrooms looking out onto the  
12 street in addition to the pedestrian network of sidewalks  
13 and streetlights throughout the development. And in many  
14 ways, we thought that this would be far more compatible and  
15 actually be a far better situation than the current school  
16 is for the neighboring uses.

17 So the last thing I guess, going back to 114A, is  
18 just the scale and character. One of the requirements of  
19 the RT-15 is a height limit of 35 feet. We're totally  
20 comfortable proffering that in and as we've designed the  
21 units, because of the step down in elevation, we've actually  
22 kept the units to a two-and-a-half to three story elevation  
23 consistent with the existing variety of single-family homes  
24 in the neighborhood. There's everything from one-story  
25 ramblers to homes that have been renovated that are two,



1 two-and-a-half stories.

2           And so our style of architecture, and this is one  
3 of the things we actually met with community members on and  
4 presented a variety of architectural styles and came to the  
5 conclusion that an eclectic mix of brick and wood siding,  
6 various colors was consistent with the character of the  
7 existing single-family homes in the neighborhood and  
8 therefore, are planning to design our elevations consistent  
9 with that theme.

10           And again, the other pictures on this particular  
11 exhibit, 114A, is a style of architecture with front porches  
12 and dormers not inconsistent with the scale and character  
13 here that's currently located at National Park Seminary not  
14 far from the site and then also, a revised elevation of the  
15 Riggs-Thompson house because it's this elevation today that  
16 doesn't exist because it's been, it's been, I don't want to  
17 use that, I guess it's been changed, I keep thinking I'm  
18 going to say bastardized, by, you know, the existing  
19 additions to it.

20           But the non-contributing elements basically have  
21 eliminated this elevation so we asked our architect to  
22 actually look at the interpretation, the historical context  
23 of the other side of the building and create an elevation,  
24 once you rip off those non-contributing elements, what you  
25 would replace them with. And that's what we have come up



1 with so far and that has not yet been vetted by the Historic  
2 Commission but that's an initial cut at an attempt to be  
3 sensitive.

4 So basically, that concludes my general --

5 BY MR. HARRIS:

6 Q One other item.

7 A Oh.

8 MR. HARRIS: I'd like to introduce as another  
9 exhibit, is it 115?

10 (Exhibit No. 115 was marked for  
11 identification.)

12 MS. ROBESON: Yes.

13 MR. HARRIS: This is identified as binding  
14 elements.

15 BY MR. HARRIS:

16 Q Can you describe what this document is?

17 A Sure. This is the -- sorry. Thank you. This is  
18 Chelsea Court binding elements dated May 26th, 2011. There  
19 are eight items on the list that basically represent binding  
20 elements that we would proffer into the re-zoning and then  
21 they would be incorporated into the preliminary plan and  
22 site plan discussion. Do you want me to read through each  
23 one?

24 Q No. I don't think we need to.

25 MS. ROBESON: Did you have the benefit of the



1 Planning Board's decision when you came up with these? Do  
2 these mirror the Planning Board's recommendations?

3 THE WITNESS: We submitted, prior to the Planning  
4 Board hearing, we had submitted a list of binding elements.  
5 This particular list reflects changes that came out of  
6 discussions with the Planning Board, yes.

7 MS. ROBESON: Okay.

8 THE WITNESS: So we had the benefit.

9 MS. ROBESON: But you haven't -- have you reviewed  
10 the opinion of the Planning Board?

11 THE WITNESS: These -- we have reviewed the  
12 opinion.

13 MR. HARRIS: Yes.

14 THE WITNESS: Yes.

15 MS. ROBESON: But you don't know if these are  
16 identical to what the Planning Board.

17 MR. HARRIS: Madam Examiner, the, as I've read the  
18 Planning Board's letter, they identified the binding  
19 elements that were previously proposed and in the letter,  
20 discuss that a little bit. At the Planning Board meeting,  
21 there was further discussion about that so I don't believe  
22 the Planning Board has authored specific binding elements.  
23 They were giving us suggestions at the hearing.

24 MS. ROBESON: All right. Well, that speaks for  
25 itself. I just wanted to see if I could shortcut in my own



1 process. Okay. We'll continue.

2 THE WITNESS: That concludes my testimony.

3 MS. ROBESON: Okay. Mr. Brown, do you have any  
4 objections to Exhibit 115 which is the proposed binding  
5 elements?

6 MR. BROWN: No objection.

7 (Exhibit No. 115 was received into  
8 evidence.)

9 MS. ROBESON: All right. Mr. Harris, your next --

10 MR. HARRIS: Oh, no. Cross-examination.

11 MS. ROBESON: Oh.

12 MR. HARRIS: Yes. I want to get this --

13 MS. ROBESON: I'm still discombobulated from this  
14 morning. I apologize, Mr. Brown. Do you have any  
15 questions?

16 MR. BROWN: I have a few questions.

17 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

18 BY MR. BROWN:

19 Q Mr. Youngentob, does EYA own this property?

20 A No. We're the contract purchaser.

21 Q You bought a lot of properties. You say you own  
22 20, you've developed 27 communities. You typically buy  
23 these through a contingency contract, correct?

24 A We buy them typically subject to whatever  
25 entitlement process that we feel we need to go to to achieve



1    what it is that we want to do but in some cases, we've  
2    actually bought properties without those entitlements in  
3    place.

4           Q     Well, I'm not interested in the amount of money  
5    that you're paying for this property but I would like to  
6    understand the basic business term contingencies that  
7    obligate you to purchase this property.

8           MR. HARRIS:  I'm going to object to the question.  
9    I don't think it's relevant and I think it goes beyond the  
10   scope of the direct examination as well.

11          MS. ROBESON:  Well, I think you did ask that he be  
12   qualified as a financial developer.

13          MR. HARRIS:  Yes.

14          MS. ROBESON:  So, Mr. Brown, can you articulate,  
15   can you proffer its relevance?

16          MR. BROWN:  Of course.  The property is zoned R-60  
17   right now and that allows for a certain amount of density,  
18   and it is certainly possible that either you or the District  
19   Council could conclude that a townhouse development would be  
20   appropriate provided that it's comparable to the density  
21   that is already prescribed for the property rather than a  
22   substantial increase in the density, and I think it would be  
23   helpful for the record to know whether or not the Chelsea  
24   School is or is not going to have a deal depending upon what  
25   type of density the District Council approves in this case.



1 In other words, does --

2 MS. ROBESON: Well --

3 MR. BROWN: Does Eakin Youngentob go away if the  
4 District Council says RT-15 is too high but RT-8 is just  
5 about right for this property?

6 MS. ROBESON: I am going to -- I see what your  
7 proffer of relevance is. I don't think that the particulars  
8 of the financial contract are relevant to this case. I  
9 think though that what you're saying -- so I'm going to  
10 sustain Mr. Harris' objection. I think what I'm hearing  
11 from you that is relevant is why not a less dense  
12 development, why, I saw in the record, and this was a  
13 question I had too, I saw in the record some of the citizens  
14 associations saying why not townhouses in the R-60 Zone, why  
15 doesn't that satisfy. And so I'm going to overrule the  
16 question relating to the specifics of the financial  
17 contingencies. If you want to posit your own question on  
18 whether this should or shouldn't be a less dense  
19 development, you can do so. I'm going to ask a question.  
20 Why not a R-60 cluster or a less dense facility?

21 THE WITNESS: Sure. Again, I think as I testified  
22 earlier, the majority of developments we've done in similar  
23 situations so close to downtown are actually developed at  
24 much higher densities with townhouses in a similar  
25 compatible nature to existing single-family homes and, you



1 know, I think as the Smart Growth Coalition recognized that  
2 this is, you know, an incredible location adjacent to the  
3 downtown benefits, adjacent to smart growth, and it would be  
4 a total underutilization of this site to develop it at a far  
5 lower density than the RT-15.

6 MS. ROBESON: Mr. Brown, do you want to continue?

7 BY MR. BROWN:

8 Q Mr. Youngentob, what do you mean by the use of the  
9 word underutilization?

10 A That we have very few opportunities in Montgomery  
11 County to bring people in close proximity to public  
12 transportation and other amenities and in this particular  
13 site, there are tremendous opportunities close by for people  
14 to walk to and so therefore, we should be taking advantage  
15 of this location and put a reasonable density on this  
16 property, one that's compatible with the surrounding  
17 neighborhood which, in my opinion, this clearly is in the  
18 sensitivity of design and if we don't take advantage of  
19 these situations in the County, then, you know, we aren't  
20 going to find places to house the 75,000 people, 75,000  
21 housing units that are coming. So I do believe that the  
22 density is not massive. It's appropriate for this location  
23 and it's appropriate given it's proximity to the downtown  
24 core.

25 Q Are you saying to me that in your use of the word



1 underutilization, there are no economics involved?

2           A     I'm not focusing on the economics whatsoever. I'm  
3 focusing purely on the location of this site relative to the  
4 infrastructure and the investment that Montgomery County has  
5 made in, you know, in the Metro, in downtown Silver Spring.

6     There was a tremendous amount of investment in both State  
7 and County funds in the downtown community and to support  
8 those retailers, to support everything about what makes a  
9 downtown successful, you need density and this particular  
10 site I think is in that location and again, in a reasonable  
11 design and style that it is totally compatible at this level  
12 of density with the single-families.

13           Q     I understand you're not focusing on economics but  
14 I am, and I'm just trying to understand whether or not this  
15 deal with the Chelsea School falls apart because of their  
16 economic expectations tied to your expectations for R-15  
17 development.

18                   MR. HARRIS: Again, I object. I don't think  
19 whether the deal falls apart or not is relevant to this  
20 application.

21                   MS. ROBESON: Mr. Brown, do you want to --

22                   MR. BROWN: I think it's --

23                   MS. ROBESON: -- have another shot at that?

24                   BY MR. BROWN:

25           Q     Well, let me ask the question this way. Could you



1 put up Exhibit 114, please? And let me ask a couple  
2 preliminary questions about the Riggs-Thompson house. What  
3 is your ultimate expectation with regard to how that house  
4 will be used and occupied once this project is built?

5 A Currently, our initial thinking is that the Riggs-  
6 Thompson house would be sold as a single-family residence,  
7 and the reason that it would be sold as a single-family  
8 residence is one of the greatest challenges of historic  
9 preservation is having somebody vested in that use that has  
10 sufficient resources to keep up the property in a historic  
11 setting, not unlike the National Park Seminary where there  
12 are numerous single-family homes as part of the overall  
13 National Park Seminary site. Those were all sold off as  
14 single-family residences to individual purchasers because  
15 that was the best possibility of not allowing those houses  
16 to fall into disrepair over time. There was some discussion  
17 early on of possibly making these offices for politicians,  
18 nonprofit politicians.

19 And again, if there's a situation where somebody  
20 can identify an ongoing source of income that would keep  
21 that home up to date and keep it up, you know, kept up, then  
22 we would be open to those suggestions but right now, our  
23 belief is that a single-family residence would be the best  
24 long-term use of that property which is not inconsistent  
25 with other historic uses.



1           Q     Yes.  And along with that, you would expect that  
2     the owners of the property would have a private yard around  
3     it which would be more or less coincident with the  
4     established environmental setting, correct?

5           A     It's possible that, yeah, there would be some  
6     private space that that owner may want to have as part of  
7     the private setting.  I don't believe that's inconsistent  
8     with --

9           Q     Right.

10          A     -- the historic setting.

11          Q     All right.  Now, by contrast, these other two park  
12     areas that you've identified would be areas that would be  
13     generally accessible to the 76 townhome owners, correct?

14          A     Not only to the 76 townhome owners but to  
15     everybody else in the community because they'd be governed  
16     by public access easements and therefore, anybody who was,  
17     you know, living at Springvale Terrace retirement community  
18     or walking from a single-family home down the street who  
19     wanted to, you know, take a seat on one of the benches that  
20     was located on one of those park areas could welcomly come  
21     in and interact with our townhome residents and feel like  
22     they were part of the community.

23          Q     All right.  So you basically agree with my  
24     distinction that I'm drawing between the private lawn of a  
25     single-family residence and the more or less public areas



1 elsewhere on the property, correct?

2 A I think, you know -- okay.

3 Q Thank you. Now, if we will take away from the  
4 density perspective the Riggs-Thompson house and its  
5 historic setting, would you agree with my analysis that the  
6 density of this project, taking away that historic setting,  
7 is roughly comparable to the density of the Cameron Hill  
8 townhomes closer to the Metro, Silver Spring Metro?

9 A I don't, I don't think it's roughly comparable.  
10 Again, you know, the whole concept of clustering density in  
11 a site, you know, this entire site area is just over five  
12 acres and so therefore, the effective density of 4.67 units  
13 per acre is significantly less than at Cameron Hill and  
14 there's far more open space in this plan than there is in  
15 the Cameron Hill plan.

16 Q So you're telling me that it is not appropriate to  
17 disregard the private single-family home and its lawn in  
18 looking at the effective density of the project?

19 A I -- no. I don't believe so because again, even  
20 if it's not, if somebody doesn't walk onto that property,  
21 it's just like, you know, if you had a, across Springvale  
22 Street where there are existing single-family homes, just  
23 because those are private yards, you still see and feel that  
24 open space that's there just like you would see and feel the  
25 open space that's around the Riggs-Thompson. So like when I



1 walk down a private street and I see single-family houses, I  
2 don't have access to them from a public access easement but  
3 I appreciate the level of density that's there because of  
4 the open space that's around those properties so, no. I  
5 don't think you can exclude it.

6 Q You talked about smart growth. Is there a  
7 requirement in the master plan that this particular property  
8 or any property in the north and west Silver Spring master  
9 plan comply with smart growth principles?

10 A Is there a requirement? I mean, there are  
11 recommendations in the master plan about, about encouraging  
12 housing uses, about encouraging pedestrian activity. I  
13 don't believe actually when the master plan was written in  
14 2000 that the word smart growth or the term smart growth  
15 even existed so many of the elements of what, of how smart  
16 growth is defined today I think are incorporated but I don't  
17 believe there's actually a reference to smart growth in the  
18 plan.

19 Q Now, with regard to the existing conditions at the  
20 Chelsea School and the existing conditions of the sidewalks  
21 in the neighborhood, these are Exhibits 112C and D, is it  
22 your testimony that these existing conditions are consistent  
23 with the requirements of the special exception?

24 MR. HARRIS: Objection. I don't know that Mr.  
25 Youngentob has testified as to what the requirements are of



1 the special exception. I think the document can speak for  
2 itself. Also, I'd note that the special exception approval  
3 had to do with adding buildings and expanding the school.  
4 The conditions, I believe, relate to that ultimate build-  
5 out. And I don't believe there is a time table in the  
6 special exception approval for the installation of any of  
7 those improvements, and the implication is that they would  
8 be tied to the expansion of the school.

9 MS. ROBESON: Well, that's a question I think that  
10 you can ask on redirect. I believe that the, I do recall  
11 that he did introduce testimony showing the bus stop and I  
12 think the implication was that it's going to get rid of this  
13 particular problem so I am going to let that question go  
14 forward.

15 THE WITNESS: Could you repeat the question?

16 BY MR. BROWN:

17 Q My basic question is whether or not you believe  
18 that the existing conditions that you're showing on those  
19 two exhibits are consistent with what was authorized for the  
20 property under the special exception?

21 A I'm not sure if every one of those situations were  
22 allowed or provided for or attempt to be corrected in the  
23 special exception. My only purpose of showing those was to  
24 represent what is in reality happening out there today.

25 Q Mr. Youngentob, do you believe that if this



1 property were developed with about half as many townhomes as  
2 you are proposing, it would be more or less compatible with  
3 the surrounding neighborhood?

4 A I guess I would have to say I think it would be  
5 less compatible with the surrounding neighborhood because I  
6 don't believe the surrounding neighborhood is just the  
7 single-family homes adjacent to the site on Springvale. To  
8 me, the surrounding neighborhood also includes the CBD and  
9 from the standpoint of the CBD and the transitional density  
10 of stepping down to the single-families, that it would be  
11 less compatible than the density that we're proposing.

12 Q And if I understand your testimony, the idea is  
13 that with all of this growth coming to the County over the  
14 next decades, it's better to have more housing rather than  
15 less closer to the Metro.

16 A It's, it's better to have a variety of housing in  
17 urban areas and I consider this adjacent to an urban area,  
18 and townhouses are an alternative housing style that is  
19 incredibly well-needed in Montgomery County, that townhouses  
20 that are close to these amenities is something that is  
21 highly sought after by the people that we want to have work  
22 in the offices in downtown Silver Spring. They're the same  
23 type of people that live in the single-family homes across  
24 the street. They're young professionals, they're empty-  
25 nesters, and they've chosen this as an alternative.



1           Not -- if what you're insinuating is that we  
2   should just build higher density and high-rises and  
3   apartments and condos on top of the Metro, I don't believe  
4   that we can sustain the type of growth that we need by doing  
5   solely that. We need a variety of housing types, and that's  
6   exactly what the master plan does speak to and other policy  
7   statements within the County so I do believe that townhouses  
8   and transitional uses make appropriate sense as do, I  
9   believe, single-families make appropriate sense in close  
10   proximity to downtown.

11          Q     Actually, that isn't what I was insinuating. I  
12   was actually insinuating that perhaps you would regard more  
13   as better in this spot. I'm not sure what the stopping  
14   point would be. Why wouldn't 30 townhomes per dwelling acre  
15   be more consistent with your smart growth objectives than  
16   15?

17          A     It may be in certain situations. I mean, there  
18   are, there's no exact science to the art of planning or the  
19   art of design or the art of architecture. It's an art  
20   because there is no one single solution for any site. It's  
21   our best judgment that in, in what we have done in the past,  
22   in looking at this particular property, looking at the  
23   surrounding densities around the property, looking at the  
24   adjacent land uses, that this was an appropriate density and  
25   a totally compatible density with the design that we are



1 proffering for the plan.

2 Q How many of these townhomes have a width of 20  
3 feet?

4 A How many of the townhomes? I do not have the  
5 specific breakdown. I don't know, actually, if any of them  
6 have --

7 Q Let me say 20 feet or more.

8 A Twenty feet or more. A number of units have 20  
9 feet or more. I don't have -- does somebody have the exact  
10 so I don't make a mistake on the number? Do we actually  
11 have the density plan?

12 Q One of the things I was looking at the other day,  
13 and I'd like you to sort of help me with your expertise on  
14 this matter --

15 A Sure.

16 Q -- as a builder of townhouses, is that I read on  
17 the web in a variety of places that the minimum reasonable  
18 width for, considered for a two-car garage these days,  
19 especially with people owning SUVs, is 20 feet. Do you  
20 agree with that number?

21 A I don't. No, sir.

22 Q Is that because townhouses are a little more  
23 cramped?

24 A No. Because actually, we've done a number of  
25 townhomes throughout the area and again, I repeat, we've



1 built over 3,000 of these units throughout the Washington  
2 area. Some units are built at 14 feet, some units are built  
3 at 16 feet. You can accommodate two car parking in a tandem  
4 configuration. And the requirement is to accommodate two  
5 cars, not necessarily a two-car garage that can, you know,  
6 have standard width spaces, and many of our units do have  
7 side-by-side two car parking but not all of them and that's  
8 not, that's not the only way to accommodate two cars.

9 Q What kind of length do you need for a tandem two-  
10 car garage?

11 A I believe the width is, I think the length is 19  
12 feet I think. The standard Montgomery County length is 19  
13 feet for space and so what we do in a situation of a -- I'm  
14 sorry?

15 MR. HARRIS: That's the length?

16 THE WITNESS: Yeah. The length is 19 feet. That  
17 was your question, right? So what we do to accommodate two  
18 cars is we actually have one car in the unit in a garage and  
19 then a second space on a driveway pad behind. So I know in  
20 the case of this site plan, the units, I believe, are 36  
21 feet deep and so therefore, there is a four foot deck that's  
22 cantilevered over the, into the alley on the back of these  
23 units and that particular four feet but now provides a 40  
24 foot length in the unit to accommodate the depth of two  
25 cars.



1 BY MR. BROWN:

2 Q I'm not sure I understand. Are you saying that  
3 these two-car garages will be sort of open? There won't be  
4 a door that will close on both cars?

5 A In the case of the narrower units, there would be  
6 a space in the unit and then a space behind a unit that  
7 would be underneath, basically, you know, 75 percent of it  
8 would be covered. The rest of it would be covered by the  
9 deck but it would not be behind a garage door, that's  
10 correct, the second space in the alley.

11 Q Your firm only builds townhomes, isn't that right?

12 A No. We actually build multi-family units as well.  
13 Condominiums.

14 Q Okay. But not single-family homes or duplexes.

15 A No. We've actually built single-families as well.  
16 We don't build duplexes but we do build single-families. I  
17 mean, in some cases, we've had strings of townhouses that  
18 were just two units so technically, you could call it a  
19 duplex but it wasn't intended to be a duplex. It was just  
20 because of that particular site design, had two townhouses  
21 together, but we've built a number of single-family homes.  
22 Can I continue with the answer to that question with regard  
23 to the single-family question? I just want to respond.

24 MS. ROBESON: Your attorney is going to get a  
25 chance to ask you questions after Mr. Brown is finished.



1 THE WITNESS: No problem.

2 MR. BROWN: That's all, Mr. Youngentob.

3 THE WITNESS: Thank you.

4 MS. ROBESON: Okay. Is there anyone else in the  
5 audience that would like to ask the questions to Mr.  
6 Youngentob now? It's solely to ask questions on his  
7 testimony. It's not your time to testify, okay? So if  
8 there's anyone that would wish to ask questions, you're  
9 welcome to come forward here and state your name and address  
10 for the record. Now also, if, I don't know whether all of  
11 you are working together or not but it does sometimes  
12 simplify things, if you want to participate, to designate a  
13 spokesperson to funnel the questions through them, all  
14 right? Okay. Please state your name and address for the  
15 record.

16 MS. VOLK: For the record, my name is Song Volk  
17 and I live on 8504 Springvale Road in Silver Spring,  
18 Maryland.

19 MS. ROBESON: Okay.

20 MS. VOLK: Just start?

21 CROSS-EXAMINATION BY MS. VOLK

22 BY MS. VOLK:

23 Q And please. I think most of these are just yes  
24 and no types of questions. Are you, do you live in the  
25 North Silver Spring area, in that neighborhood?



1           A     I do not. I live in Montgomery County but not in  
2 North Silver Spring.

3           Q     So you don't live in North Silver Spring. You  
4 don't live in the neighborhoods in that area but you are,  
5 because of your work, an expert on smart growth in some  
6 ways, correct? You have been doing, as a developer, smart  
7 growth before everybody else has been doing smart growth,  
8 correct?

9           A     That's correct.

10          Q     The features of smart growth and how it's  
11 implemented varies from community to community, isn't that  
12 correct? No two neighborhoods are alike.

13          A     Absolutely correct.

14          Q     There's -- okay. It's a broad concept, a concept  
15 which has to be applied and tailored per neighborhood or per  
16 city, correct?

17          A     Correct.

18          Q     Do you believe, as a smart growth expert, that  
19 smart growth comes as a one size fits all solution for all?

20          A     No, I do not.

21          Q     Correct. Okay. Smart growth, smart growth takes  
22 into account the things that a neighborhood values, correct?

23          A     Correct.

24          Q     Right. A vision the neighborhood has for itself,  
25 correct?



1           A     Correct.

2           Q     Smart growth should strengthen a neighborhood,  
3 correct?

4           A     I believe smart growth should strengthen a  
5 neighborhood.

6           Q     Right. What it shouldn't be doing is insulate or  
7 split a neighborhood, correct?

8           A     I think anytime you have a zoning case where  
9 there's possibilities of increased density, especially, you  
10 know, in Montgomery County where we have well-educated  
11 people, there's opportunities for differences of opinion  
12 with regard to what's appropriate or not and --

13          Q     Right.

14          A     -- I think in, you know --

15          Q     I'm sorry. Let me, let me clarify.

16                MR. HARRIS: Well, let him finish the answer,  
17 please.

18                BY MS. VOLK:

19          Q     Sorry.

20          A     So, you know, the fact that there are people who  
21 support the concept and people who potentially object to the  
22 concept is not uncommon and I think that's an issue that we  
23 will have to continuously deal with as Montgomery County  
24 leans to evolve and grow to accommodate, I think, the growth  
25 that's coming and the changes that exist even from 2000. If



1 we were to say that there's never going to be controversy  
2 over density or changes, then the reality is the houses that  
3 you live in today, which were once farmland, would never be  
4 there today. I'm sure there was controversy back then.

5 MS. ROBESON: Okay, Mr. Youngentob.

6 THE WITNESS: Yes.

7 MS. ROBESON: This is cross-examination.

8 THE WITNESS: I'm just trying to answer the  
9 question about splitting a neighborhood.

10 MS. ROBESON: So I'm going to stop you here  
11 because --

12 THE WITNESS: Thank you.

13 MS. ROBESON: Okay. Continue, Ms. Volk.

14 BY MS. VOLK:

15 Q Okay. What I actually really meant to say was in  
16 terms of splitting or insulating, it should not cause  
17 traffic to increase in a neighborhood significantly,  
18 correct? It's supposed to actually minimize traffic,  
19 correct?

20 A We are going to have our traffic expert testify  
21 but with regard to the traffic that's being generated from  
22 the townhomes, we don't believe that there's, there's a  
23 significant increase whatsoever, that the traffic increase,  
24 if there even is one, is imperceptible and in response to  
25 community concerns, in dealing with the community, we've



1 located our entrances where they would have the least  
2 impact, if there even is an impact, and we've agreed to  
3 commit to all the existing traffic regulations that exist in  
4 the neighborhood and we would not propose any changes to any  
5 of the restrictions that are put in place today.

6 Q But the yes or no answer to that question, smart  
7 growth really shouldn't significantly increase traffic in a  
8 neighborhood, correct? Yes or no?

9 A I'm not --

10 MS. ROBESON: Yes or no, Mr. Youngentob?

11 THE WITNESS: No. I don't believe that's true.

12 BY MS. VOLK:

13 Q Okay. You don't believe that smart growth  
14 shouldn't cause a significant increase in traffic?

15 A I believe that smart growth could have an impact  
16 on traffic.

17 Q A significant increase.

18 A Again, your definition of significant and --

19 Q Well, let me --

20 A -- mine may be two totally different things so,  
21 no. I do believe that by accommodating growth in urban  
22 areas, traffic may change and how you interpret significant  
23 is another issue.

24 MS. ROBESON: Okay.

25 THE WITNESS: I'm sorry.



1 MS. ROBESON: I know that. Your attorney is here  
2 to bring out all your, all these points on redirect.

3 THE WITNESS: Okay.

4 MS. ROBESON: Right now we're just --

5 THE WITNESS: Sorry.

6 MS. ROBESON: We're just going with the yes or no  
7 because it is cross-examination, all right?

8 THE WITNESS: Okay.

9 BY MS. VOLK:

10 Q Okay. Let's just say yes or no to this. It's  
11 definitely supposed to increase walkability, correct?

12 A Yes.

13 Q And you heard a lot of testimony at the Planning  
14 Board, correct, from people in the neighborhood that were  
15 against the proposed development?

16 A Yes, I did.

17 Q And is it correct that you heard them speak about  
18 their ability to, you know, their relationships with their  
19 neighbors, their frequent use of the roads to walk or to  
20 jog, take their children out for a stroll? Is that correct?  
21 Did you hear that testimony?

22 A I heard that testimony.

23 Q Okay.

24 MS. ROBESON: Okay.

25 BY MS. VOLK:



1           Q     Is it correct that you heard them speak about  
2     their strong sense of identity and the place that they have  
3     for their neighborhood, correct?

4           A     Yes.

5           Q     Wouldn't you be able to conclude from that  
6     testimony that they are already living in a way that smart  
7     growth is actually trying to promote?

8           A     I'd have to say no.

9           Q     Okay. So I just wanted to confirm here that the  
10    testimony you heard from the people in the neighborhood that  
11    were against your proposed development, you did not feel  
12    that despite their discussions about how they're integrated  
13    into the community and how they use the roads and the  
14    walkways, that they were living a feeling of connectedness  
15    that was in some ways what smart growth is trying to  
16    promote?

17          A     Again, I think my -- the reason why I said no is  
18    because I think my definition of smart growth may be  
19    slightly different than your definition of smart growth.

20          Q     Are you aware of the Environmental Protection  
21    Agency?

22          A     EPA, sure. Yes.

23          Q     Yes. And are you aware of their websites  
24    detailing smart growth?

25          A     I don't believe I've looked at their --



1 Q Okay. Are you aware of --

2 A -- website recently.

3 Q -- their product fact sheet? Well, their fact  
4 sheet called smart growth fact sheet?

5 A Not specifically, no.

6 Q Are you aware of their definition of smart growth  
7 on their website or their 10 principles that they say make  
8 up a smart growth network?

9 A I'm aware of it because some of the people  
10 referenced, I guess, these 10 principles at the, at the  
11 hearing.

12 Q But before the testimony, you were not aware of  
13 that particular, those --

14 A Well, I'm aware of numerous agencies that have  
15 issued, you know, various definitions of smart growth and  
16 again --

17 Q But yes or no? You were not aware of the EPA's 10  
18 principles of smart growth.

19 A I --

20 Q Yes or no?

21 A Okay. No.

22 Q Okay. Were you aware before your testimony about  
23 the townhouse development the other week that your townhouse  
24 developments were designed with two-car garages?

25 A Repeat the question?



1 MS. ROBESON: I'm sorry, Ms. Volk. I'm having  
2 trouble hearing you.

3 MS. VOLK: Oh, I am so sorry.

4 MS. ROBESON: These are not projection mics.

5 MS. VOLK: Oh, okay. Sorry. Sorry.

6 MS. ROBESON: These are recording mics.

7 BY MS. VOLK:

8 Q Were you aware before your testimony the other  
9 week that the EYA townhouse development you're proposing  
10 were designed with two-car garages?

11 A Yes.

12 Q Were you also aware during that testimony that  
13 your witness for the Coalition for Smarter Growth objected  
14 to the two-car garage design?

15 A Yes.

16 Q Let's see here. Were you aware that the local  
17 neighborhood association voted 3 to 1 against your proposed  
18 development and proposed re-zoning?

19 A I was aware they voted against it. I wasn't sure  
20 of the exact calculation or how many people were actually  
21 represented in the association at the particular vote.

22 Q Can you provide me the numbers of people within  
23 the neighborhood that were for your proposed development?

24 A I don't think I can provide you an exact number.  
25 I mean, there were a number of people who testified at the



1   hearing, there were a number of people who have written  
2   into --

3           Q     How many?

4           A     -- community blogs.

5           MS. ROBESON:   Okay.

6           MS. VOLK:    Okay.

7           MS. ROBESON:   The number of people in support or  
8   for it is not really -- I understand why, I mean, I can tell  
9   from the file that there is a significant controversy.  The  
10   number of people in support or in opposition, we don't do  
11   what they call zoning by plebiscite so that's not one of  
12   the --

13          MS. VOLK:    Okay.

14          MS. ROBESON:   -- criteria that I can base my  
15   decision on, all right?

16          MS. VOLK:    Okay.  No problem.

17          BY MS. VOLK:

18          Q     In your earlier statement today, you mentioned  
19   that you have developed in other areas all throughout D.C.,  
20   Maryland and Virginia.  In those areas that you built  
21   townhouse developments, were they already zoned for  
22   townhouses at that time?

23          A     Not in all situations, no.

24          Q     Okay.  So in some situations, they were either  
25   zoned that way or you had to apply for re-zoning, correct?



1           A       In every case, we had to go through an entitlement  
2   process.  There's never a by right solution for our typical  
3   development.

4           Q       Okay.  Thank you very much.

5           A       You're welcome.

6                   MS. ROBESON:  Okay.  Anyone else that wishes to --  
7   okay.  This is --

8                   MR. HARRIS:  May I ask redirect now?

9                   MS. ROBESON:  We're not finished.

10                  MR. HARRIS:  Okay.  Okay.

11                  MS. ROBESON:  I get hands in the back.  This is  
12   what I'm really going to strongly request if we can, so that  
13   we can proceed with the case in a timely manner.  I will  
14   certainly let you ask your own questions today.  I would  
15   strongly urge you to identify a spokesperson if we continue  
16   the case in the future, and keep in mind that we have the  
17   ability to exclude repetitive testimony so I'm asking you  
18   just to be conscious of those facts so that we don't  
19   needlessly protract the case.  All right.  So who?  Sir, do  
20   you want to come forward?

21                  MR. EISENMANN:  Yes.

22                  MS. ROBESON:  Okay.  Can you state your name and  
23   address for the record?

24                  MR. EISENMANN:  Yes.  Jim Eisenmann 8611  
25   Springvale Road.



1 MS. ROBESON: Okay.

2 MR. EISENMANN: Okay.

3 CROSS-EXAMINATION BY MR. EISENMANN

4 BY MR. EISENMANN:

5 Q Good afternoon.

6 A Good afternoon.

7 Q I want to reference, actually, this Exhibit 114  
8 here. These, there's four main bullets and then five side  
9 bullet points here.

10 A Right.

11 Q Grading, layout, open space, lower traffic, those  
12 all relate to what you think are benefits to this  
13 neighborhood that we're looking at in this picture, right?

14 A Yes.

15 Q Okay.

16 A Let me just clarify. Grading I guess you could  
17 determine is a benefit but it's our attempt at trying to  
18 make the development as compatible to the existing community  
19 given the change in topography on the site and therefore,  
20 the ability to step those units into the hillside so.

21 Q And as you testified, you're going to use the  
22 grading to make it --

23 A To keep the --

24 Q -- compatible to --

25 A To keep the scale and height consistent with, you



1 know, the variety of housing that's in the neighborhood.

2 Q Okay. It says design max, design maximizes  
3 community compatibility. When you see that word community,  
4 can you define that?

5 A Can I define community?

6 Q Yeah. What are you meaning? What does that  
7 encompass?

8 A Again, I think in reference to an earlier  
9 question, you know, we've used the words neighborhood, we've  
10 used the words community. To me, you know, this community  
11 is not necessarily defined by, you know, a very rigid  
12 boundary. It's everybody has various interpretations and I  
13 believe even the Planning Board, you know, had various  
14 interpretations of what kind of a boundary or area should be  
15 considered so for me, the community is the multi-family on  
16 -- sure. Maybe this photo will be better, Exhibit 112G.  
17 You know, I think the community is, is kind of an amorphous  
18 area spreading from, you know, the edges of the downtown,  
19 the Whole Foods, you know, City Place all the way through  
20 the high-rise, Springvale Terrace, into the single-family  
21 neighborhood.

22 Q So when you use the word -- just slide it a  
23 little. I still want to come back to that. So when you use  
24 the word community here, can you outline on, when I say  
25 here, I mean Exhibit 114, can you outline on 112G where that



1 community is or is not?

2           A     I don't think I've ever, I've never -- I  
3 personally have a very hard time if what the question is,  
4 you know, can I draw a line here on Colesville Road and say  
5 that's the boundary. For me, I'm not sure that, you know, a  
6 single-family home over here is different than a single-  
7 family home over here so again, to me, it's more of an  
8 amorphous area and I know, you know, from a zoning  
9 standpoint, there may be a very specific definition that the  
10 Planning Board was actually trying to define but, no. I  
11 personally don't have a very specific definition of  
12 neighborhood.

13           MS. ROBESON: Okay. All right. Mr. Harris, I  
14 would like the applicant's input on a specific definition.  
15 Do you have a witness that's going to --

16           MR. HARRIS: We do, Ms. Robeson. Yes.

17           MS. ROBESON: You have a separate land planner?

18           MR. HARRIS: Yes, ma'am.

19           MS. ROBESON: Okay. So you're going to raise that  
20 with another witness?

21           MR. HARRIS: Absolutely.

22           MS. ROBESON: All right.

23           MR. EISENMANN: Will that witness be able to  
24 identify the definition of community as it was used in  
25 Exhibit 114?



1 MR. HARRIS: Yes. Yes, he will. Yes.

2 MR. EISENMANN: Okay. Thank you.

3 BY MR. EISENMANN:

4 Q And I do have -- actually, on Exhibit 114 because  
5 I live on the corner here of Springvale Road and Springvale  
6 Lane.

7 MS. ROBESON: Now, okay. You have to -- is there  
8 any way you can describe where you live for the tape so  
9 somebody reading it?

10 MR. EISENMANN: It's --

11 MS. ROBESON: Are you in some corner of that  
12 intersection?

13 MR. EISENMANN: I have to figure out which way is  
14 north and south and west. It's the, it's hard to say.

15 MS. ROBESON: Can you help him with what is north  
16 and what is --

17 MR. HARRIS: North is like this. North is this  
18 way.

19 MR. EISENMANN: North is that way or north is this  
20 way?

21 MR. HARRIS: I'd just describe it as at the corner  
22 of Springvale and Springvale Lane.

23 MR. EISENMANN: Yeah. That's where I live, the  
24 corner of the two Springvales here.

25 BY MR. EISENMANN:



1           Q     When I, when this is built, when I look across the  
2 street, am I looking at, because of the grading here because  
3 we're right at where the hill goes down --

4           A     Right.

5           Q     -- am I looking at a rooftop or what am I looking  
6 at?

7           A     You'll be looking at -- I'm going to go back to  
8 one of the other exhibits that we showed right here.  
9 Because we haven't done the final architecture because  
10 that's not a requirement at this stage of the process, what  
11 we're trying to show was a representation of what you'd be  
12 looking at and this was a single-family style townhouse that  
13 we built in Clarendon. And so our, the way we've laid this  
14 out is that there would be a front porch and basically, a  
15 two-story facade with a dormer element similar to what you  
16 see basically here, so that's what you'd be looking at and  
17 there would be six of those stretched down Springvale.

18          Q     All right. And so we're looking at Exhibit 114A.

19          A     Correct.

20          Q     But when I also look, when I'm standing on my  
21 front porch looking out at Chelsea Court I guess it's called  
22 and I look to the right, this is northwest somewhat but  
23 west, I'm also going to see these, not necessarily the front  
24 of a house, right?

25          A     You may, depending on the angle, you may have a



1 glimpse into the rear of one of these homes. Let me point  
2 out that the alley itself is actually depressed in a grade  
3 so the level of the alley is below Springvale and that what  
4 you'd really see is, because in community discussions, the  
5 idea of a linear park where we've actually done instead of a  
6 single row of street trees, a double row of street trees  
7 with a wider sidewalk and some small park bench areas along  
8 here, so that would be part of your view in the foreground  
9 before you saw the houses in the background.

10 Q And I could see -- do each of the townhouses have  
11 decks on the back?

12 A They have rooftop terraces incorporated into the  
13 roof line itself and then also, they do have a four foot  
14 cantilever deck, which is usually an option, extending off  
15 the back of the house in the alley.

16 Q And if I wanted to go from my house to the  
17 Majestic Theater --

18 A Um-hum.

19 Q -- would I go down Springvale to Ellsworth or up  
20 Springvale to Pershing?

21 A Well, again, I don't know how, you know, you  
22 typically walk --

23 Q Or would there be a sidewalk, I'm sorry, would  
24 there be a sidewalk cutting through?

25 A Well, there are sidewalks all around the



1 perimeter.

2 Q I see that, but will there be sidewalk cutting  
3 through?

4 A Sure. You can actually see there's a connection  
5 here to Springvale. I mean, I think in terms of the, you  
6 know, absolute shortest distance, it may be that you come  
7 out of your front door and travel along Springvale here,  
8 maybe turn onto this walkway here, you come down, hit this  
9 sidewalk and come up Ellsworth this way.

10 Q Okay.

11 A So there's a number of, you know, different ways  
12 to access downtown.

13 Q Okay. All right. Thank you.

14 A Yep.

15 MS. ROBESON: Yes, sir.

16 MR. GURWITZ: I'll keep it brief.

17 MS. ROBESON: You don't have to keep it brief.

18 The important thing is you get your turn so let's, if you  
19 need time, take it. I didn't mean to rush you.

20 MR. GURWITZ: Thank you. I'm also sensitive to  
21 your concerns.

22 MS. ROBESON: Okay.

23 MR. GURWITZ: My name is Michael Gurwitz. I live  
24 at 8607 Springvale Road.

25 MS. ROBESON: Okay.



1 CROSS-EXAMINATION BY MR. GURWITZ

2 BY MR. GURWITZ:

3 Q Mr. Youngentob.

4 A Yes.

5 Q You testified to what we are calling now the  
6 Chelsea School existing conditions on the 8600 block of  
7 Springvale Road which is the block I live on across from the  
8 school. Did you question any residents of the 8600 block  
9 about the conditions such as any problems that maybe are  
10 caused by school buses, any problems that maybe are caused  
11 by the gymnasium entrance? Did you question any of the  
12 residents of that block?

13 A We did have conversations in some of our community  
14 meetings. I guess it's the, is it the Spragle?

15 UNIDENTIFIED VOICE: Schlagel (phonetic sp.).

16 THE WITNESS: Schlagels who actually live up and  
17 they've actually expressed support to us that they feel that  
18 this would be a more compatible use and expressed --

19 BY MR. GURWITZ:

20 Q No. I'm not asking that question. I'm asking --

21 A -- and expressed concerns.

22 Q -- did you ask them about the existing conditions?

23 A We did, yes.

24 Q Okay. Do the Schlagels walk to the Metro?

25 A I don't know if they do or not.



1 Q It's my understanding that smart growth, as --

2 MS. ROBESON: I'm sorry. One second, please.

3 (Discussion off the record.)

4 MS. ROBESON: I'm sorry. Go ahead.

5 BY MR. GURWITZ:

6 Q It's my understanding that smart growth, as an  
7 idea for developing neighborhoods, has been around since the  
8 1990s. Before that, there was another way of thinking  
9 called new urbanism. Do you have any idea how far into the  
10 future smart growth will be considered the best way for a  
11 good way to develop neighborhoods? Yes or no, please?

12 A The question is do I have any idea how --

13 Q Yeah.

14 A -- far into the future?

15 Q If smart growth has only been around as a guiding  
16 principle since the 1990s, can you predict with any  
17 certainty that smart growth will be the accepted or an  
18 accepted way of developing neighborhoods 10 or 20 years from  
19 now? Might it be replaced by something else?

20 A I have to answer this with not a yes/no question  
21 because I don't believe smart growth, maybe the terminology  
22 smart growth has been around since the late 1990s but I  
23 actually would go back, you know, thousands of year to the  
24 development of European cities everywhere that the idea of  
25 concentrated density near the urban core, near the retail



1 markets was always the method.

2 MS. ROBESON: Okay.

3 THE WITNESS: We got --

4 MS. ROBESON: Can you predict that the concept of  
5 smart growth is not going to change as it's currently  
6 configured today?

7 THE WITNESS: I am not a prophet. I mean, I  
8 can't --

9 MS. ROBESON: So I would interpret that as a no?

10 THE WITNESS: Well, again, to me, the concepts --

11 MR. GURWITZ: That is all I was seeking, Your  
12 Honor.

13 THE WITNESS: The concepts of smart growth will be  
14 around forever, that people will always, the idea, we got  
15 away from it during a period of time but --

16 MS. ROBESON: Okay. I understand. Okay.

17 THE WITNESS: Yes. I'm not trying to be  
18 difficult.

19 MS. ROBESON: His question to you is --

20 THE WITNESS: Yes.

21 MS. ROBESON: -- can you predict it won't change.  
22 If you don't know, you can say you don't know.

23 THE WITNESS: My personal belief is that it will  
24 be around for as far as we can all foresee.

25 MS. ROBESON: No. That's not what I asked.



1 THE WITNESS: I'm sorry. Okay.

2 MS. ROBESON: That's not what he asked. He's  
3 asking you can you predict, can you predict whether the  
4 current format or the current, what is currently considered  
5 smart growth will change?

6 BY MR. GURWITZ:

7 Q Is it true you just said you are not a prophet?

8 A I am definitely not, yes.

9 MS. ROBESON: All right. There we go.

10 THE WITNESS: We can agree on that. We can agree  
11 on that.

12 BY MR. GURWITZ:

13 Q So I would dispute your notion that it will be  
14 around forever.

15 MS. ROBESON: That's your testimony, okay, so you  
16 get a second shot at this apple. All right. This is just  
17 cross-examination.

18 THE WITNESS: Sorry.

19 BY MR. GURWITZ:

20 Q My last question.

21 A Yes.

22 Q Do you recall when either yourself or perhaps Mr.  
23 Harris, but somebody who represented EYA first approached  
24 SOECA about this proposed project and told us that you would  
25 not build it if we did not want you to.



1           A     That was me and --

2           Q     So you do recall that, yes?

3           A     I definitely recall the statement and --

4           Q     Thank you.

5           THE WITNESS:   Can I finish my answer?

6           MS. ROBESON:   Your attorney --

7           THE WITNESS:   Okay.

8           MS. ROBESON:   -- is here --

9           THE WITNESS:   Thank you.   Sorry.

10          MS. ROBESON:   -- to provide you with that  
11 opportunity.

12          THE WITNESS:   Thank you.   Sorry.

13          BY MR. GURWITZ:

14          Q     If I were to tell you that hundreds of people have  
15 signed a petition against this project, would you consider  
16 that being still wanted?

17          MR. HARRIS:   Objection.   That, he's assuming  
18 something that's not in evidence.   I've not seen a petition  
19 signed by hundreds of people.

20          MR. GURWITZ:   It's a theoretical question, Your  
21 Honor.   If I were to tell him.

22          MS. ROBESON:   Well, it's a hypothetical question.

23          MR. GURWITZ:   Hypothetical, yes.

24          MS. ROBESON:   I guess my concern is that as I  
25 explained earlier, zoning by plebiscite, which means you



1 can't just decide a zoning case properly, you can't consider  
2 numbers of people for and against.

3 MR. GURWITZ: I understand, Your Honor, but I  
4 was --

5 MS. ROBESON: So I'm going to sustain Mr. Harris'  
6 objection --

7 MR. GURWITZ: Okay.

8 MS. ROBESON: -- which means you need to move on  
9 to another questions.

10 MR. GURWITZ: I have no further questions.

11 MS. ROBESON: Great.

12 MR. GURWITZ: Thank you.

13 THE WITNESS: Thanks.

14 MS. WARREN: I just have a few questions.

15 CROSS-EXAMINATION BY MS. WARREN

16 BY MS. WARREN:

17 Q Was it your intention --

18 MS. ROBESON: Please state your name and --

19 MS. WARREN: Oh, I'm sorry. My name is Vicki  
20 Warren.

21 BY MS. WARREN:

22 Q Was it your intention when you showed the buses  
23 and the lack of sidewalk on Springvale, was it your  
24 intention to indicate that the neighborhood was against  
25 another school coming into this property?



1           A     No.

2           Q     It was not?

3           A     No.

4           Q     Okay.  Then why did you make it look like having a  
5 school in the neighborhood was a bad thing?

6           A     I wasn't trying to make the point that it was a  
7 bad thing.  I think the sensitivity that the Chelsea School  
8 had when they approached us in thinking about alternatives  
9 for the site felt, based on previous testimony, based on,  
10 you know, current comments I think that the leadership of  
11 the Chelsea School continues to hear on issues, felt that by  
12 bringing somebody like us in who has experience in  
13 Montgomery County doing what we do was potentially a better  
14 alternative than a school that went back to the 200 units  
15 with more traffic than they currently operate and had these,  
16 you know, other issues that were identified, you know, back  
17 in October of '99.

18          Q     So what you're saying is that bringing you in was  
19 better for the Chelsea School because you only talked to the  
20 Chelsea School?

21          A     No.  I mean, when they -- one of their assumptions  
22 was that by seeking us out, that this was actually a better  
23 alternative than going back to a larger scale school on the  
24 property.

25          Q     But you didn't talk to the residents about whether



1 or not they would prefer a school?

2 MR. HARRIS: Objection.

3 MS. ROBESON: Okay. Just for everyone's benefit -  
4 - well, what's your objection, Mr. Harris?

5 MR. HARRIS: He had explained that he had many  
6 discussions with the community that covered all different  
7 kinds of things.

8 MS. ROBESON: Okay. Mr. Brown, do you have any  
9 input on this?

10 MR. BROWN: I didn't actually hear the entire  
11 question so I don't. I don't.

12 MS. ROBESON: Can you repeat the question?

13 MS. WARREN: Yeah.

14 BY MS. WARREN:

15 Q My original question was by showing the buses  
16 idling in the street and by indicating that there was no  
17 sidewalk on Springvale, were you trying to indicate that the  
18 neighborhood would prefer your development over another  
19 school. And you --

20 MR. HARRIS: And he answered that question.

21 THE WITNESS: I said --

22 MS. WARREN: He said no.

23 THE WITNESS: -- no. Correct.

24 BY MS. WARREN:

25 Q Okay. And then I asked you if you talked to the



1 neighborhood and you said you talked to the Chelsea School  
2 and they indicated that they would prefer --

3 A It wasn't --

4 MS. ROBESON: Okay. Okay. You know, what we're  
5 looking at here, just so we can focus things, is the  
6 criteria of the zoning.

7 MS. WARREN: Okay.

8 MS. ROBESON: I understand that the zoning process  
9 can be, you know, for better or worse, it is what it is and  
10 it's not always the best but what, but what I'm required to  
11 do is make a decision based on the, on what's in the Zoning  
12 Ordinance, okay?

13 MS. WARREN: Okay.

14 MS. ROBESON: So if there's some other, if there's  
15 some reason related to the Zoning Ordinance that you think  
16 is relevant, you can let me know.

17 MS. WARREN: Okay.

18 MS. ROBESON: Otherwise, I'm going to sustain Mr.  
19 Harris' objection.

20 MS. WARREN: Okay. And I'll move onto another  
21 question.

22 MS. ROBESON: Okay.

23 MS. WARREN: But I think one of the ordinances  
24 was, had to do with improving the conditions in the  
25 neighborhood or, you know, not making them more egregious.



1 MS. ROBESON: Well, compatibility.

2 MS. WARREN: Yeah, compatibility.

3 MS. ROBESON: Compatibility is definitely an  
4 issue.

5 MS. WARREN: And right now, we have a school. And  
6 his slides indicated and his testimony indicated that there  
7 was some residential objections to that school and that's  
8 what I was trying to get at, where he got that and why, or  
9 if he was indicating that.

10 MS. ROBESON: I thought he testified that he  
11 didn't intend to imply that there was a residential -- I  
12 think what he testified to was that in his opinion, it's an  
13 improvement because of "X@ existing conditions. What --

14 MS. WARREN: To be an improvement, "X@ existing  
15 conditions would have to have a detriment.

16 MS. ROBESON: Yes.

17 MS. WARREN: Well, that's what I'm trying to get  
18 at.

19 MS. ROBESON: So you're --

20 MS. WARREN: Why does he think it's a detriment.

21 MS. ROBESON: Okay. Then you can ask him why he  
22 thinks, you can ask him why he thinks the existing  
23 conditions aren't, are a detriment to the community.

24 MR. HARRIS: Ms. Robeson, I mean, he went into  
25 great detail on that with this letter and other things.



1 We're really rehashing what he said. The fact that this  
2 individual doesn't agree with it is her privilege but  
3 that --

4 MS. WARREN: No. That's not what I'm saying. I'm  
5 just, I'm just trying to get at whether or not he was trying  
6 to indicate that the community felt it was a detriment, and  
7 he already answered that by saying that Chelsea told him  
8 that it was a detriment. I'm willing to leave this and move  
9 onto another question.

10 MS. ROBESON: Yes. I don't -- Chelsea isn't here.

11 MS. WARREN: Yes.

12 MS. ROBESON: I think he was testifying -- what is  
13 your position?

14 THE WITNESS: Well, my belief that, you know,  
15 streets that don't have sidewalks are not as good,  
16 potentially, as streets that do have sidewalks. I believe  
17 that buses idling in the middle of the road is probably not  
18 as good as no buses idling in the middle of the road. And  
19 based on the history of, you know, the testimony that was  
20 provided back in 1999 at the original special, the revised  
21 special exception hearing, the community clearly came out  
22 with a number of issues that are no different today that  
23 they objected to then so maybe the community has changed  
24 their opinion.

25 MS. WARREN: No. It's that -- those issues were



1 addressed in the special exception.

2 MS. ROBESON: Okay.

3 MS. WARREN: It's just that Chelsea didn't follow  
4 them.

5 MS. ROBESON: All right. This is not your time to  
6 testify.

7 MS. WARREN: Okay. That's fine. Let's just move  
8 on.

9 BY MS. WARREN:

10 Q Okay. I have one other question.

11 A Sure.

12 Q And that is why did you call Ellsworth Ellsworth  
13 Urban Park?

14 A I'm sorry. That's what it was referenced on the  
15 drawing.

16 Q Right.

17 A I mean, so.

18 Q Okay. But you didn't give it that label. That's  
19 not the name of it. It's just Ellsworth Park. Okay.

20 MS. ROBESON: Is that a question to him?

21 MS. WARREN: No. He answered the question.

22 MS. ROBESON: Okay.

23 MS. WARREN: Okay. That's all.

24 THE WITNESS: Thanks.

25 MS. WARREN: Thank you.



1 THE WITNESS: Thanks.

2 MS. ROBESON: Anyone else? Okay. Mr. Harris, you  
3 have redirect of this witness.

4 MR. HARRIS: At the risk of -- I very much want to  
5 get to Mr. Youngentob's redirect but I've been informed that  
6 we have a witness here who has to leave by 2:45 to get to  
7 another meeting. Her testimony would be very brief and I  
8 would like to see if we could interrupt this briefly.

9 MS. ROBESON: Is this an expert witness?

10 MR. HARRIS: It is not an expert witness.

11 MS. ROBESON: Okay. Mr. Brown, do you have any  
12 objection?

13 MR. BROWN: No. I'm going to probably make a  
14 similar request later on in the day.

15 MS. ROBESON: We're kind of playing it by ear here  
16 so that's fine. I'm going to excuse Mr. Youngentob  
17 temporarily and you can call that witness.

18 MR. BROWN: In fact, I have a witness here that  
19 would like to speak briefly and get out also, maybe right  
20 after this witness.

21 MS. ROBESON: Okay. Mr. Harris, do you have a --

22 MR. HARRIS: Could we call Cheryl Cort, please?

23 MS. ROBESON: Do you have an objection if mister -  
24 - okay. Just a second. Just a second. I really want to  
25 move this as expeditiously so we can accommodate everybody's



1 schedule. Mr. Harris, do you have an issue letting one of  
2 Mr. Brown's witnesses go so that they can leave after your  
3 witness?

4 MR. HARRIS: I think we're going to have to be  
5 cooperative to get this hearing done and I'm willing to do  
6 that. I don't want it to get out of hand. It is our turn  
7 to present our case.

8 MS. ROBESON: I totally understand.

9 MR. HARRIS: But I think we can accommodate that.

10 MS. ROBESON: Okay. Thank you. All right. Mr.  
11 Harris, please call the witness.

12 MR. HARRIS: Okay. We call Cheryl Cort.

13 MS. ROBESON: Ms. Cort, please raise your right  
14 hand.

15 (Witness sworn.)

16 MS. ROBESON: Okay. Go ahead.

17 DIRECT EXAMINATION

18 BY MR. HARRIS:

19 Q Ms. Cort, would you, let me preface this, try to  
20 be as brief as you can but complete. People will want to  
21 ask you some cross-examination questions.

22 A Okay.

23 Q I know you have a schedule. So if you could tell  
24 us your name and why you're here and what your position is.

25 A My name is Cheryl Cort and I am the Policy



1 Director for the Coalition for Smarter Growth. We are a  
2 nonprofit working the Washington Metropolitan Region on land  
3 use and transportation decisions working to accommodate  
4 growth in ways that enhance existing communities and protect  
5 our natural and historic resources. I'm also actually  
6 Chair of the Washington Sustainable Growth Alliance Jury and  
7 I've brought testimony to that effect of this project has  
8 been, received preliminary recognition from the Washington  
9 Sustainable Growth Alliance.

10 MS. ROBESON: Okay. Ms. Cort, I'm seeing some  
11 indication from the audience that they can't hear you.

12 THE WITNESS: Oh, I'm sorry.

13 MS. ROBESON: Do you mind trying to speak up a  
14 little bit? Unfortunately, these aren't projection mics.

15 THE WITNESS: Do you want me to sit here to  
16 project better?

17 MS. ROBESON: That may be better.

18 THE WITNESS: I usually don't have a problem with  
19 people hearing me. Should I turn the system -- it's  
20 recorded. Okay.

21 BY MR. HARRIS:

22 Q Go on.

23 MS. ROBESON: Continue. I'm sorry to interrupt.

24 THE WITNESS: Do you want me to give my testimony?

25 BY MR. HARRIS:



1           Q     Yes.  Go ahead, please.

2           A     Oh, okay.  Well, thank you so much.  I wanted to  
3 provide testimony on behalf of a, of the Washington  
4 Sustainable Growth Alliance which is actually a coalition of  
5 a number of groups, businesses, civic, environmental groups  
6 that have come together on working on smart growth.  It  
7 includes the Chesapeake Bay Foundation, the Coalition for  
8 Smarter Growth, my organization, and our press community  
9 partners, Greater Washington Board of Trade, Metropolitan  
10 Washington Builders Council, Land Institute of Washington  
11 and the Urban Land Institute's Terwilliger Center for  
12 Workforce Housing.

13                     Our smart and sustainable growth recognition  
14 program recognizes development proposals that exemplify  
15 smart growth principles with a goal of encouraging the  
16 support and approval of development projects that will  
17 foster smart growth in our region.  Through this program,  
18 the Alliance hopes to inform regulators, public officials,  
19 citizen groups, developers and others of the advantages that  
20 this project, that these projects bring to our community,  
21 our region.

22                     Each quarter, we have an independent jury that  
23 reviews development proposals against rigorous criteria  
24 including location, density of design and mix of uses,  
25 transportation mobility, accessibility, environment, mixed-



1 income housing, community benefits and community  
2 participation. In 2010, our jury gave a preliminary  
3 recognition to the Chelsea School redevelopment proposal,  
4 the zoning matter before you, and, for meeting our criteria.

5 In particular, the qualities that are noteworthy  
6 about this proposal are its an increase in density within  
7 walking distance of a community, community center and retail  
8 services and existing and proposed public transit stations,  
9 grocery stores, libraries, community civic centers and  
10 parks. There will be new sidewalk and street connections  
11 provided through and around the development. These  
12 improvements will help reduce automobile dependency and  
13 encourage the use of walking, bicycling and riding transit.  
14 The development will utilize environmentally sensitive site  
15 design measures, including bioretention facilities, and the  
16 project will seek lead for neighborhood development and lead  
17 for home design, a building efficiency standard. And it's  
18 worth noting that we will get the full, full amount of  
19 moderately-priced dwelling units out of this project and  
20 that it's certainly commendable.

21 I have -- I think I'll leave it at that, you know,  
22 I have investigated this from the perspective of my  
23 nonprofit organization which is a member of this larger  
24 group, but we think it's an important project that will be  
25 an appropriate transition between the energy and busyness of



1 a downtown and quiet residential neighborhoods that are  
2 close to that downtown area. And I have dealt with this  
3 developer before. I find that the quality of their work is  
4 very, very good and will provide an appropriate transition  
5 with single-family attached housing to transition to  
6 surrounding neighborhoods that are single-family detached.  
7 Thank you.

8 Q May we introduce those as exhibits?

9 A Yes, you can.

10 Q Okay.

11 MS. ROBESON: And does Mr. Brown have copies of  
12 those?

13 MR. HARRIS: No but --

14 THE WITNESS: Here. I have extra here.

15 MR. HARRIS: Oh, you do. Okay. Very well. Thank  
16 you.

17 MS. ROBESON: So I will mark these as Exhibit 116.  
18 Mr. Brown, do you have any objection?

19 MR. BROWN: Which one is 116?

20 MR. HARRIS: There are two letters.

21 MS. ROBESON: Oh.

22 MR. HARRIS: Or two documents.

23 MS. ROBESON: 116 will be the Coalition for, the  
24 letter from the Coalition for Smarter Growth from Ms. Cort,  
25 and 117 will be the document titled, from the Washington



1 Sustainable Growth Alliance testimony. Do you have any  
2 objections?

3 MR. BROWN: No.

4 MS. ROBESON: Okay.

5 (Exhibit Nos. 116 and 117 were marked  
6 for identification and received into  
7 evidence.)

8 MS. ROBESON: Mr. Harris, do you have any other  
9 questions?

10 MR. HARRIS: No further questions.

11 MS. ROBESON: Mr. Brown, do you have any cross-  
12 examination?

13 MR. BROWN: Very brief.

14 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

15 BY MR. BROWN:

16 Q Ms. Cort, when did this project come to your  
17 attention and how did it come to your attention?

18 A It came to my attention because I serve on this  
19 jury for the Smart Growth Alliance, the Sustainable Growth  
20 Alliance so it was several, quite a few months ago in 2010.

21 Q How did it come to the Alliance's attention then?

22 A Oh, we -- the Sustainable Growth Alliance  
23 advertises and promotes inviting developers to submit  
24 applications and then we review them, and those that meet  
25 our criteria we'll recognize as meeting our criteria.



1           Q     Well, is the answer to the question they brought  
2     it to your attention, Mr. Youngentob brought it to the  
3     Alliance's attention?

4           A     Yes.    Yes.

5           Q     Thank you.   And when was that?

6           A     I don't have the exact date.   I will need to get  
7     back to you on the date.

8           Q     About when was it?

9           A     Maybe about four months ago.

10          Q     Now, was this the plan that showed the street  
11     straight through the middle or was it the one that had  
12     streets all through it?

13          A     The plan is changed.   The one that we looked at  
14     had a, it had kind of the curve in the street by the  
15     historic building.

16          Q     So you haven't evaluated the current plan.

17          A     No.    I have.   I have since then.

18          Q     But this testimony is based on the old plan.

19          A     The preliminary recognition, yes.   I don't think  
20     that the change in the --

21          Q     I didn't ask that question.   I'm just asking  
22     whether or not the recommendations were based on a plan that  
23     is no longer operative.

24          A     Preliminary -- that's correct.

25          Q     Thank you.



1           MR. HARRIS: Ms. Robeson, I have a problem when a  
2 witness can't answer a question. Not every question is an  
3 absolute yes and an absolute no. There is some  
4 qualification to almost everything we say and, you know,  
5 here, Ms. Cort was going to complete her answer and she was  
6 cut off.

7           MS. ROBESON: Well, it is cross-examination. I  
8 would ask that the witnesses not be interrupted unless -- I  
9 guess my issue, Mr. Harris, is that it is cross-examination.  
10 Some of the questions have not been asked -- I have let the  
11 questions proceed when they're asked not in a yes or no  
12 format, all right, because --

13          MR. BROWN: Ms. Robeson, the witness was  
14 volunteering information that was not responsive to the  
15 question. This is Mr. Harris' witness. If he wants to  
16 bring this information out on cross-examination, I don't  
17 have any objection.

18          MS. ROBESON: What information out on cross-  
19 examination?

20          MR. BROWN: She was volunteering information about  
21 what she looked at. I was asking questions about what the  
22 Alliance looked at and then she threw in this non-responsive  
23 information and I cut her off because it wasn't what I was  
24 asking about. I wasn't asking about what she looked at.  
25 She was testifying as a representative for this association.



1 MS. ROBESON: I have to say, Mr. Harris, it is  
2 cross-examination.

3 MR. HARRIS: That's fine. We can cover it.

4 MS. ROBESON: Okay.

5 MR. HARRIS: Let's move on.

6 MS. ROBESON: Is there anyone else that would like  
7 to ask questions of miss -- okay. Please come forward and  
8 state your name. No. She can sit there. Please come  
9 forward and state your name and address for the record.

10 MS. VOLK: Hello. Song Volk, 8504 Springvale  
11 Road.

12 MS. ROBESON: Please speak up if you can.

13 MS. VOLK: Sorry.

14 CROSS-EXAMINATION BY MS. VOLK

15 BY MR. VOLK:

16 Q Do you live in the North Silver Spring area?

17 A I do not.

18 Q Where do you live?

19 A I live at 1438 Florida Avenue, Northwest,  
20 Washington, D.C.

21 Q Okay. So you do not live in the North Silver  
22 Spring area and you do not live in the neighborhoods in that  
23 area, correct?

24 A That's correct.

25 Q Do you believe, as a smart growth expert, that



1 smart growth comes as a one size fits all solution for every  
2 neighborhood, yes or no?

3 A No. No.

4 Q So you do not believe that there is a certain  
5 number of housing units mandated in a particular area in  
6 order for it to be considered smart growth, correct?

7 A Correct.

8 Q One of the things that smart growth should not be,  
9 in your belief, yes or no, is cause traffic to increase in a  
10 neighborhood, correct?

11 A No.

12 Q Smart growth should promote walkability, correct?

13 A Absolutely.

14 Q Smart growth values should also include being able  
15 to connect with neighbors, encourage walking, creating  
16 distinctive neighborhoods with a strong sense of place,  
17 creating a sense of community, correct?

18 A Yes.

19 Q You heard a lot of testimony at the Planning Board  
20 from people in the neighborhood against the EYA proposed  
21 development. Is it correct that you heard them speak about  
22 their ability to connect with neighbors, their frequent use  
23 of the roads to walk, jog, take their children out for a  
24 stroll, et cetera, is that correct?

25 A Yes.



1           Q     Is it correct that you heard them speak about a  
2     strong sense of identity and place they have for their  
3     neighborhood?

4           A     Yes.

5           Q     Would you be able to conclude that they are living  
6     in a way that promotes the values that smart growth is  
7     trying to encourage?

8           A     Yes.

9           Q     Did you have objections during your testimony last  
10    week regarding the two-car garage design development?

11          A     Yes.

12          Q     Has that, to your knowledge, changed, that design  
13    development?

14          A     Not to my knowledge, no.

15          Q     Has EYA provided you some assurance that these  
16    town, that the people who will be in these townhouse  
17    developments will ride the transit, public transit systems  
18    and not necessarily a majority of them drive to work?

19          A     We haven't, I've raised the issue about the two-  
20    car garages and I made recommendations of providing a  
21    transportation management plan. You know, they said we  
22    would get more into those details at the site plan level  
23    rather than the map amendment level.

24          Q     You stated during your earlier testimony in front  
25    of the Planning Board that EYA was essentially more than



1 generous because they are providing park space and their  
2 townhouse development right next to a public park, correct?

3 A That's correct.

4 Q Were you aware that there's some sort of mandate  
5 that indicates that there should be a bare minimum of green  
6 space for such developments whether they're next to a park  
7 or not?

8 A I'm aware that Montgomery County has a very  
9 substantial open space requirement for developments, yes.

10 Q Do you believe that EYA's designated green space  
11 is the absolute bare minimum or exceeds the bare minimum  
12 required under the law?

13 A I don't know the law. I think it's a lot.

14 Q Okay. Thank you very much.

15 MS. ROBESON: Anyone else? While she's coming up,  
16 I will say, Mr. Brown, that it's not up to you to tell the  
17 witness. You can ask me and I'll tell the witness to stop  
18 if she's not responsive to the answer.

19 MR. BROWN: Very good.

20 MS. ROBESON: Okay.

21 MS. BISSELL: My name is Joan Bissell. I live at  
22 504 Greenbrier Drive.

23 MS. ROBESON: Okay.

24 MS. BISSELL: Five blocks from the Chelsea School  
25 development.



1 CROSS-EXAMINATION BY MS. BISSELL

2 BY MS. BISSELL:

3 Q I'm interested that the Chesapeake Bay  
4 organization is part of the Coalition. Are you aware that  
5 there will be a need, according to all the information  
6 collected by the Planning Board, will require downstream  
7 local sewers for sewer capacity augmentation as a result of  
8 this development?

9 A Expansion of capacity for sewer water?

10 Q Yes. Correct.

11 A I'm not aware of that.

12 MS. BISSELL: I'm not supposed to fill it in,  
13 right?

14 MS. ROBESON: Right.

15 BY MS. BISSELL:

16 Q My other question to you is --

17 MS. ROBESON: You're good. You're a quick  
18 learner.

19 MS. BISSELL: Okay. I'm trying.

20 BY MS. BISSELL:

21 Q My other question is have you looked at the  
22 comparison between what is being offered for the moderately-  
23 priced person versus what's being offered for the other  
24 units?

25 A For market rate?



1 Q As far as --

2 A In terms of the price differential?

3 Q No. As far as will they have the same number of  
4 garage parking places, will they have the same amount of  
5 space.

6 A Well, I certainly hope that, you know, we can talk  
7 more about the idea of -- one of the things that EYA did for  
8 the Tacoma proposal is actually look at building out one of  
9 the parking spaces into a den instead of a garage. In terms  
10 of difference between an MPDU and a market rate unit, there  
11 are differences in finishes. I don't know that there's, I'm  
12 not sure that there are differences in square footage of the  
13 total.

14 Q I guess that's what I'm asking, whether you --

15 A But certainly, one of the ways to save money is to  
16 own fewer cars, to have less space allocated to storing cars  
17 so to have some units have one car garages rather than two-  
18 car garages would be a very reasonable thing to do.

19 Q Okay. And that doesn't bother you that the people  
20 that are being encouraged to become part of the community  
21 are at a disadvantage then, is that correct? That doesn't  
22 bother you?

23 A What disadvantage?

24 Q Fewer spaces to park a car.

25 A Well, I think that --



1           Q     No place to put a garbage can.

2           A     I mean, I think by reducing parking ratios is a  
3 way to attract more of the transit-oriented buyer who wants  
4 to own fewer cars, rely more on walking and taking transit.

5     So, you know, we've testified, submitted testimony again  
6 that we are interested in looking at reducing the parking  
7 ratio. Unfortunately, it's actually in the underlying  
8 zoning for townhouses is requiring two, two cars per unit  
9 and we think that that needs to be looked at but that's a  
10 larger policy issue.

11          Q     So you're saying that people that would be  
12 eligible for the moderate priced housing don't need the two  
13 car spaces, is that correct?

14               MR. HARRIS:  Objection.  That's not what she said.

15               THE WITNESS:  Not, I mean --

16               MS. ROBESON:  Well, she can answer.

17               THE WITNESS:  I think that we'd like to attract  
18 buyers who are one-car families or no-car families to this  
19 location.  It's a great opportunity to reduce those costs.  
20 Whether you're qualified as someone at an MPDU level or  
21 you're a market rate buyer, we'd like to see reduced  
22 parking.

23               MS. BISSELL:  Thank you.

24               MS. ROBESON:  Thank you.  Yes, ma'am.

25               MS. SAMIY:  My name's Kathleen Samiy.  I'm the



1 president of the association.

2 MS. ROBESON: Of which?

3 MS. SAMIY: Seven Oaks-Evanswood --

4 MS. ROBESON: Okay.

5 MS. SAMIY: -- Citizens Association. And I just  
6 have one question for --

7 MS. ROBESON: Well, you're represented by an  
8 attorney here.

9 MS. SAMIY: Well, I'm asking this also, can I ask  
10 it as an individual? Can I ask my question as an  
11 individual? I've lived in the community for --

12 MS. ROBESON: Mr. Brown?

13 MR. BROWN: There's only a limit to what I can do,  
14 Your Honor. It's extremely difficult and time consuming to  
15 spend hours and hours organizing a perfectly orchestrated  
16 presentation. My clients simply cannot afford it so I think  
17 that giving her a little leeway to ask one question --

18 MS. SAMIY: One question.

19 MR. BROWN: -- is not unreasonable.

20 MR. HARRIS: I don't have a problem as long as my  
21 witnesses get a little leeway to answer the questions.

22 MS. ROBESON: Okay. Go ahead.

23 CROSS-EXAMINATION BY MS. SAMIY

24 BY MS. SAMIY:

25 Q It's just a yes or no question. You are here as a



1 smart growth witness or to testify to this. It's a planning  
2 theory. And I guess my question is in terms of the  
3 application of that theory to this location at the Chelsea  
4 School, would you say smart growth theory, as a planning  
5 theory, is, trumps what might be the existing land law of R-  
6 60 zoning and the master plan? Is it more important, the  
7 theory and the application of the denseness that happens at  
8 this location or is the law more important?

9 MS. ROBESON: Well, you've got to ask one  
10 question. You can't ask an either/or question.

11 MS. SAMIY: Okay.

12 BY MS. SAMIY:

13 Q So do you believe the theory trumps a law of  
14 what's allowable? Do you believe the theory is more  
15 important than what's allowable to be built there at this  
16 existing time because right now, R-60 zoning allows  
17 townhouses so I want to know if the theory justifies the  
18 increase.

19 MS. ROBESON: Okay. I'm going to give her some  
20 latitude to have more than a yes or no answer on this one.

21 MS. SAMIY: Okay. That's fine. I just want to  
22 know.

23 THE WITNESS: The land use law is in dispute and  
24 we deferred to, you know, I've looked at the Staff Report in  
25 terms of the discussion of the, the designation of this site



1 in the, in the sector plan done in 2000 and I think it's a  
2 reasonable interpretation of how that site was designated as  
3 a part of that so within the context of the larger plan and  
4 what's being proposed, I think this is actually a very  
5 beneficial project.

6 BY MS. SAMIY:

7 Q So the theory allows the change in interpretation  
8 which is okay to apply an increase of density.

9 A Well, it's an interpretation. It's not a change  
10 in interpretation. I mean, there's a dispute over the  
11 legal, there's a dispute over the property zoning or the  
12 interpretation of the plan and what is allowable for this  
13 site.

14 Q And so the theory --

15 MR. HARRIS: Objection. This --

16 MS. ROBESON: Okay. That is asked.

17 MS. SAMIY: That's all.

18 MS. ROBESON: I think you've --

19 MS. SAMIY: I just wanted a yes or no.

20 MR. HARRIS: No.

21 MS. SAMIY: No. Okay.

22 MS. ROBESON: You've got all the blood from the  
23 turnip, okay?

24 MS. SAMIY: That's all. Thank you.

25 MS. ROBESON: Not that you're a turnip but I think



1 it was answered.

2 MR. HARRIS: Two quick redirect questions.

3 REDIRECT EXAMINATION

4 BY MR. HARRIS:

5 Q You were advised that or agreed that the plan had  
6 changed in terms of the location of that road between the  
7 time of the application and this plan, and you were going to  
8 opine as to your belief as to whether it would still meet  
9 the criteria under these, as depicted here.

10 A That's correct.

11 Q What is your opinion on that?

12 MS. ROBESON: When you say that road, can you  
13 just --

14 MR. HARRIS: Oh, I'm sorry. The extension of  
15 the --

16 THE WITNESS: This section right here.

17 MR. HARRIS: Yes.

18 MS. ROBESON: The road that bisects the property  
19 just north?

20 MR. HARRIS: Well, literally, the connection of  
21 that road to Pershing.

22 MS. ROBESON: Okay. Fine.

23 MR. BROWN: I object to the question on the  
24 grounds that this witness' personal beliefs are not  
25 relevant. She isn't a witness that was even on the list



1 from the applicant and I thought she was here simply to  
2 report on the results of an organization's views on a plan  
3 and we've gotten that testimony.

4 MS. ROBESON: Well, I think it's -- I understand  
5 what you're saying. I think it's a fair question since you  
6 cross-examined her on it, that you raised the issue. I  
7 think she's entitled to answer.

8 BY MR. HARRIS:

9 Q All right.

10 A So in terms of the preliminary recognition that  
11 the Alliance provided, I do not think that the change in  
12 plan would affect the preliminary recognition.

13 Q Okay. And the second question is when the jury  
14 and the Washington Sustainable Growth Alliance approved  
15 this, that was with the two-car garages.

16 A That's correct.

17 Q So even though you personally might disagree, the  
18 jury supported it.

19 A That's correct.

20 Q Thank you.

21 MS. ROBESON: All right. To the parties -- yes.

22 MR. BROWN: I do have a, it's not my witness but  
23 it is a witness on the opposition side that I understand is  
24 not going to be available.

25 MS. ROBESON: Is it an expert?



1 MR. BROWN: No.

2 MS. ROBESON: No. Okay. This is what I'm going  
3 to do. I have been informed that there are 12 people in the  
4 hallway, okay, in addition to the people in here. We have  
5 another hearing room on the seventh floor which we can  
6 utilize. What I'm going to suggest, unless anybody has any  
7 objections, is that we'll take Mr. Brown's witness since  
8 it's not an expert, then we're going to take a 20 minute  
9 recess and see if we can move upstairs so we can accommodate  
10 everyone.

11 There's something about this case that has been  
12 somewhat unusual in the procedural aspect but if -- so is  
13 that agreeable to -- I know you have a time deadline to get  
14 your witness out so we can take this next witness, take a --  
15 how long do you think it will take you to get your exhibits  
16 upstairs?

17 MR. HARRIS: About 15 minutes maximum.

18 MS. ROBESON: Okay. We'll take a 15 minute break  
19 after your witness. We're going to -- now, let me ask the  
20 court reporter. You have to set up.

21 THE COURT REPORTER: I might be needing a little  
22 more than 15 minutes.

23 MS. ROBESON: Okay. Then we're just going to,  
24 that's one thing, then we're just going to stay put.

25 MR. HARRIS: May I make this suggestion? There



1 are, certainly there are a number of people here to observe.  
2 There are some who are here to testify. Originally, this  
3 hearing was scheduled at 9:30, then it was scheduled at 11,  
4 and we made arrangements with witnesses to be here  
5 originally based on the 9:30 start and then we bumped them  
6 back. They've made plans from the outset to testify this  
7 afternoon. I'm okay with Mr. Brown's witness testifying but  
8 we have I think about five witnesses here that I would like  
9 to put on as well.

10 MS. ROBESON: Okay. All right. All right. Then  
11 we're going to stay put.

12 MR. HARRIS: I think we can.

13 MS. ROBESON: All right. So, Mr. Brown. What we  
14 are going to do is take a break for five minutes after Mr.  
15 Brown's witness and then we'll come back with your redirect  
16 on Mr. --

17 MR. HARRIS: Youngentob.

18 MS. ROBESON: -- Youngentob. Exactly.

19 MR. HARRIS: Okay. Do we --

20 MS. ROBESON: All right. Mr. Brown?

21 MR. HARRIS: One second. Excuse me. What time  
22 does your witness have to get out of here, Dave?

23 MS. WILSON: By 3.

24 MR. HARRIS: By 3.

25 MS. WILSON: I have a very brief thing to say.



1                   MR. HARRIS:   Okay.   Okay.   Fine.

2                   MS. ROBESON:   All right.   Ma'am, could you come

3 forward?

4                   MR. BROWN:   She isn't my witness.   She's just on

5 my side.

6                   MR. HARRIS:   Oh, okay.   I'm sorry.   I beg your

7 pardon.

8                   MS. WILSON:   Would you rather that I sat here?

9                   MR. HARRIS:   No.   You're fine there.

10                  MS. ROBESON:   No.   It's --

11                  MS. WILSON:   Sorry.

12                  MR. HARRIS:   I don't bite as Ms. Robeson said.

13                  MS. WILSON:   No.   I'm happy to move over here.

14                  MR. HARRIS:   Okay.

15                  MS. WILSON:   I'm happy to move over here.

16                  MS. ROBESON:   Okay.   For everyone's benefit, there

17 are some people in the back that are having trouble hearing

18 witnesses sitting there so keep your voice, we're going to

19 need both spots so keep your voices up if possible.   Could

20 you please raise your right hand?

21                         (Witness sworn.)

22                  MS. ROBESON:   Okay.   Please state your name and

23 address for the record.

24                  MS. WILSON:   My name is Lisa Wilson.   I reside at

25 600 Woodside Parkway in Silver Spring, Maryland.



1                   MS. ROBESON: Okay. Now, this is your change to  
2 testify.

3                                   DIRECT EXAMINATION

4                   THE WITNESS: I'm here to speak very briefly. I  
5 am a citizen that was invited, back in 1999, to actually  
6 participate in the Northwest Silver Spring Master Plan, in  
7 the development of the master plan, and I am here simply to  
8 reaffirm what there seems to have been some controversy over  
9 as to whether or not that planning process addressed  
10 building townhouses in this particular area. And while we  
11 did not specifically address the Chelsea School property,  
12 what I can very clearly speak to is that when we addressed  
13 the issue of building townhouses on what's I guess referred  
14 to as the Watt (phonetic sp.) property, which is slightly  
15 down the hill from here, it was of, an issue of extreme  
16 concern.

17                   I was invited as a citizen member of the Board to  
18 participate because I do reside in the specific community  
19 that is in a triangular area. I know there's been some  
20 discussion here today about what is the community and where  
21 is this area, and because we are bounded by some larger  
22 roads, which are specifically Cedar, Dale Drive and  
23 Ellsworth, there is a sort of triangular community where we  
24 do, as neighbors, very much identify ourselves as a  
25 community. It is a physical definition of the community



1     because of the traffic patterns.

2                     And when we talked about building townhouses on  
3     the Watt property which eventually, I think the master plan  
4     very appropriately addressed, got some higher density  
5     without sacrificing the nature of that community, we did  
6     also address the importance of maintaining Cedar Street as a  
7     kind of protection because the community is so very small.  
8     That is the reason that I'm here and I don't really have too  
9     much more to say besides that.

10                    MS. ROBESON: Well, is it your position -- in what  
11     way were you involved in the master plan?

12                    MS. WILSON: They invited a number of citizens.

13                    MS. ROBESON: Who is they?

14                    MS. WILSON: The Planning Board.

15                    MS. ROBESON: Oh, the Citizens Advisory Committee?

16                    MS. WILSON: I was on the Citizens Advisory  
17     Committee, yes.

18                    MS. ROBESON: Okay. All right.

19                    MS. WILSON: And I believe they sought me out  
20     particularly because I resided in that very small  
21     triangulated area. I was invited and told that that was why  
22     they wanted me there.

23                    MS. ROBESON: Okay. Any questions for this  
24     witness?

25                    MR. BROWN: Very, very quickly.



1 MS. ROBESON: Well, Mr. Harris, do you have any?

2 MR. HARRIS: Yes.

3 CROSS-EXAMINATION

4 BY MR. HARRIS:

5 Q I think you were here earlier and you heard Mr.  
6 Youngentob recite this letter that says that the Chelsea  
7 School site is the buffer between the intense development of  
8 the Silver Spring CBD and the single-family residential  
9 community. That was a letter written on behalf of Seven  
10 Oaks-Evanswood. Do you agree with that statement?

11 A I actually wasn't here. I haven't been here that  
12 whole time.

13 Q Okay.

14 A But I can testify that my recollection, as we  
15 really talked more about the, there are a number of what  
16 originally were single-family homes along Cedar Street that  
17 there was quite a bit of discussion as to whether they could  
18 be used for commercial purposes and that was what was  
19 defined really as the buffer in our conversations.

20 Q So you disagree with what SOECA said here?

21 A Well, can you read it to me because I wasn't here  
22 for that testimony?

23 Q I will read it. The site is a very sensitive one  
24 for the community as it is the buffer area between the  
25 intense development of the Silver Spring CBD and the single-



1 family residential community, and the site they're referring  
2 to is the Chelsea School.

3 MS. ROBESON: Mr. Harris, what exhibit are you  
4 reading from?

5 MR. HARRIS: I beg your pardon. That is --

6 MS. ROBESON: Is it 113?

7 MR. HARRIS: 113. 113.

8 MS. ROBESON: And what page are you on?

9 MR. HARRIS: The third page.

10 MS. ROBESON: Can you show --

11 MR. HARRIS: Paragraph number one.

12 MS. ROBESON: Okay. Can you, do you think you  
13 could show her --

14 MR. HARRIS: Sure.

15 MS. ROBESON: -- what you're reading from?

16 BY MR. HARRIS:

17 Q Paragraph number one.

18 A And this, I'm sorry because I wasn't here, this is  
19 from whom to whom?

20 Q From a lawyer on behalf of SOECA to the Board of  
21 Appeals.

22 A Okay. Well, I'm not going to disagree with  
23 anything that the lawyer would have said. I certainly am  
24 not here to do that, but my recollection is that we talked  
25 very much about Cedar Street and I suppose because the



1 school is immediately behind those houses on Cedar Street  
2 that perhaps, that's why he stated it that way.

3 Q Okay.

4 MR. HARRIS: That's all I have.

5 MS. ROBESON: Okay. Mr. Brown?

6 REDIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Ms. Wilson, you are the Lisa Wilson listed on page  
9 vi of the North Silver Spring Master Plan as part of the 12-  
10 person North Silver Spring Master Plan Advisory Group?

11 A That's correct.

12 Q And you submitted what has been listed as Exhibit  
13 50 in the record, a letter of May 11th. Is that your --

14 A Yes.

15 Q -- letter to the Planning Board?

16 A That is.

17 Q Does that fairly and concisely summarize your  
18 position in this case?

19 A Yes, it does.

20 Q I'd like to read you from the Planning Board's  
21 recommendation. Were you at, were you by any chance at the  
22 hearing, at the Planning Board last Thursday?

23 A No, I wasn't.

24 Q This is what the Planning Board said in their  
25 recommendation of approval, among other things, the majority



1 of the Board also found persuasive the testimony provided by  
2 the Staff member who was primary author of the master plan  
3 who disagreed with the opposition argument that the language  
4 of the plan regarding potential townhouse development along  
5 a particular segment of Georgia Avenue was intended to  
6 prohibit townhouses anywhere else in the master plan area.

7 Do you know who the primary author of the master  
8 plan was?

9 A Is that Ms. Sorenson? No. I don't --

10 Q Do you know Nancy Sturgeon?

11 A Sturgeon, yes. Sturgeon. Nancy Sturgeon.

12 Q Do you agree with her interpretation of the master  
13 plan as reflected in this document?

14 A No, I do not.

15 Q And what is it that you disagree with about  
16 limiting townhomes along Georgia Avenue?

17 A We had some wide-ranging discussions. I don't  
18 think all of them are reflected in the plan but clearly,  
19 density was of primary concern and we discussed it not just  
20 with Georgia Avenue but with the Watt property and in  
21 general as something that would impact the community.

22 MR. BROWN: I have nothing further.

23 MR. HARRIS: No further questions. Thank you.

24 MS. ROBESON: Okay. Anyone else? All right. You  
25 can be excused. Thank you. Okay. Mr. Harris, do you want



1 to pick up the redirect --

2 MR. HARRIS: I would --

3 MS. ROBESON: -- right now or do you want to take  
4 a break? What is your preference?

5 MR. HARRIS: I would take a two minute break just  
6 to figure out who we can get on to testify who has a time  
7 constraint.

8 MS. ROBESON: Okay.

9 MR. HARRIS: Mr. Youngentob will keep.

10 MS. ROBESON: Could we make that a five minute  
11 break?

12 MR. HARRIS: We can make it a five minute break,  
13 sure.

14 MS. ROBESON: I need the three minutes.

15 MR. HARRIS: Okay.

16 MS. ROBESON: Okay. We'll go off the record and  
17 we'll be back in five minutes.

18 (Whereupon, at 2:53 p.m., a brief recess was  
19 taken.)

20 MS. ROBESON: We are going back on the record.

21 It's 3:05. I do have one request. Our court reporter is  
22 not picking up some of the testimony because of cell phone  
23 interference and because of conversations in the background.

24 These recording mics are very, very sensitive so if you do  
25 have cell phones, please turn them off and you can take



1 your, if you need to call, you can take them out into the  
2 lobby area, but they are interfering with her ability to get  
3 the record correct. Also, please limit your conversations  
4 in the background because she can't hear what's going on,  
5 all right? So we want the County Council to have the full  
6 benefit of everybody's testimony. With that, and just for  
7 everyone else's notice, we are going to go past 5:00 so if  
8 you need to make plans, do that. Mr. Harris?

9 MR. HARRIS: Yes. I would like to call Meg  
10 Klabatt and her two children.

11 MS. ROBESON: Well, that's fine.

12 (Discussion off the record.)

13 MS. ROBESON: Okay. Please raise your right hand.

14 (Witness sworn.)

15 MS. ROBESON: Please state your name and address  
16 for the record.

17 MS. KLABATT: Yes. Meg Klabatt, 404 Mansfield  
18 Road.

19 DIRECT EXAMINATION

20 BY MR. HARRIS:

21 Q Would you -- I see you have a letter there but I  
22 think you want to speak to that. Please tell us what you're  
23 here to say.

24 A Okay. I am not in the SOECA area but I'm a  
25 neighbor of it. And so we bought our house four years ago.



1     We were a growing family and we wanted to have one car and  
2     there weren't a lot of houses in our price range that were  
3     close enough that my husband could walk to Metro, and I  
4     really think that this townhome option would make it, open  
5     up a lot of options for people like us that would like to  
6     live close and not have a killer commute and not have a  
7     million dollar home.

8           Q     Okay. Is that a letter that you want to submit --

9           A     Yes.

10          Q     -- or has that already been submitted?

11          A     It has not been submitted.

12          Q     It has not been submitted.

13                 MR. HARRIS: May I please submit that? Thank you.

14                 MS. ROBESON: Okay. Is that 118, Mr. --

15                 MR. HARRIS: I lost track.

16                 MS. ROBESON: Yes, it is.

17                 MR. HARRIS: 118.

18                 MS. ROBESON: Mr. Brown, do you object? Mr.

19     Brown?

20                 MR. BROWN: Beg your pardon?

21                 MS. ROBESON: Do you have an objection to  
22     admitting that as 118? Thank you. Okay. Hearing none --

23                 MR. BROWN: No objection.

24                 MS. ROBESON: No objection. And that will be

25     5/26/11 letter from Meg, is it Klabatt?



1 THE WITNESS: Klabatt, yes.

2 MS. ROBESON: Klabatt.

3 (Exhibit No. 118 was marked for  
4 identification and received into  
5 evidence.)

6 MS. ROBESON: Okay. Mr. Brown, do you have any  
7 questions of Ms. Klabatt?

8 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

9 BY MR. BROWN:

10 Q Ms. Klabatt, I've only heard that name once  
11 before. I had a very good friend named Jim Klabatt from  
12 Milwaukee, Wisconsin. Any relation?

13 A Yes.

14 MS. ROBESON: Oh, wow.

15 THE WITNESS: We're related to all the Klabatts.  
16 It's a very small clan.

17 MS. ROBESON: Okay. That was an easy one, and  
18 that was yes or no. Does anyone in the, does anyone else  
19 have any questions for Ms. Klabatt? Seeing none, Ms.  
20 Klabatt, you're excused.

21 THE WITNESS: Okay.

22 MR. HARRIS: Thank you for coming and bringing the  
23 troops. Okay. Next Tina Slater.

24 MS. ROBESON: Ms. Slater, please raise your right  
25 hand.



1 (Witness sworn.)

2 MS. ROBESON: Please state your name and address  
3 for the record.

4 MS. SLATER: Okay. My name is Tina Slater. I  
5 live at 402 Mansfield Road, Silver Spring, Maryland.

6 MS. ROBESON: Okay. Are you --

7 DIRECT EXAMINATION

8 BY MR. HARRIS:

9 Q Can you describe where Mansfield Road is --

10 A Oh, Mansfield --

11 Q -- in relation to the subject site?

12 A We live half a mile from the Chelsea School.

13 We're on, just on the other side of Wayne Avenue but further  
14 down towards the old Blair High School.

15 Q Okay. And I see you have a letter as well.

16 A Yes.

17 Q If you want to just speak to the letter, read it,  
18 whatever.

19 A Okay.

20 Q That's up to you.

21 A Okay. Thank you. I'm writing in support of the  
22 EYA project to build the Chelsea Court townhomes on the  
23 property currently used by the Chelsea School. We live half  
24 a mile from this property. Townhomes at this location would  
25 be very appropriate for this transitional piece of property.



1     The five acre parcel has a mix of buildings and densities  
2     bordering it, single-family homes on two sides, a public  
3     library, an 11-story apartment building and a multi-story  
4     senior residence plus a row of former single-family homes  
5     converted to professional offices border the rest. Thus,  
6     the Chelsea Court project would be a logical bridge between  
7     the single-family home and the CBD.

8             It's also an appropriate infill development that  
9     would accommodate the County's growing population. We're  
10    also pleased that 10 of the 76 homes would be moderately-  
11    priced dwelling units. Another bonus is proximity to  
12    transit. The future purple line is a couple of blocks away,  
13    Ride-On serves the area and the new Silver Spring Transit  
14    Center where the Metro is is a five block walk. People can  
15    leave their cars behind and use transit, bike or simply walk  
16    to the retail, restaurants and jobs.

17            Some neighbors fear that 76 townhomes would  
18    exacerbate traffic but we would argue the opposite. When  
19    our home was being remodeled, we lived at the Lenox Park  
20    Apartments that are right across from the Silver Spring  
21    Metro. We were surprised to find that on Monday through  
22    Friday, the cars did not move from the resident only parking  
23    garage. It was only on weekends that the parking garage  
24    emptied out. Chelsea Court residents probably would not  
25    contribute that much to rush hour traffic either.



1           The nearby Cameron Hill and the National Park  
2   Seminary are examples of EYA's quality standards. For those  
3   fortunate enough to buy at Chelsea Court, they'll gain  
4   convenience. For the rest of us, we'll gain an  
5   aesthetically pleasing sight that is a logical transition  
6   from the single-family neighborhoods to the CBD.

7           MS. ROBESON: All right.

8           MR. HARRIS: Thank you. I have no further  
9   questions.

10          MS. ROBESON: Mr. Brown, do you have any  
11   questions?

12           CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

13           BY MR. BROWN:

14          Q    Ms. Slater, you live outside the boundaries of the  
15   Seven Oaks-Evanswood Citizens Association.

16          A    Yes. I'm in Park Hills which is right, the next  
17   neighborhood over.

18          Q    Is there anything about the positive attributes of  
19   this development that wouldn't be equally or more positive  
20   if there were say half as many units?

21          A    I don't know. I'm, I happen to be a transit  
22   advocate so the more people we could put closer to transit,  
23   I think the better it is for congestion around the County.

24          Q    So would it be better if instead of 76 units, we  
25   had 152 units?



1           A     I don't know. What would that look like?

2           Q     Well, have you looked at what 30-some units would  
3 look like?

4           A     I would imagine it would look probably something  
5 that would be similar to what's on Springvale. Would that  
6 be right?

7           Q     So you haven't looked at what this project would  
8 look like at either half or twice the density of the current  
9 density. Is that --

10          A     No.

11          Q     -- a fair statement?

12          A     I mean, you're right. You're right. I've looked  
13 at what EYA has proposed. That's what I've looked at.

14          Q     Thank you.

15               MR. BROWN: Nothing further.

16               MS. ROBESON: Okay. Anyone else with questions?  
17 Okay.

18               THE WITNESS: I wanted to mention that I have an  
19 excerpt from someone else's testimony who couldn't be here  
20 today. I don't know if I'm permitted to read that or if I  
21 can submit it for the record. It's some people who live on  
22 Springvale Road.

23               MS. ROBESON: Well, you can submit it for the  
24 record. They are not here. We have other letters in the  
25 record but you should not read it because it's not subject



1 to cross-examination.

2 THE WITNESS: Okay.

3 MS. ROBESON: So I'll let it in for the weight.

4 You an add it to the record, unless I --

5 THE WITNESS: Okay.

6 MS. ROBESON: -- hear an objection, but not

7 testify as to what it says.

8 THE WITNESS: Okay. And would I give that to you?

9 MS. ROBESON: Yes. And that will be 119. Does  
10 anyone have any questions based on the submission of this  
11 letter?

12 THE WITNESS: It's from Martha and Tom Slagle who  
13 live on Springvale.

14 MS. ROBESON: Okay. Thank you.

15 UNIDENTIFIED SPEAKER: Is it, is it signed?

16 MS. ROBESON: Actually, it isn't signed by them.  
17 We do require letters to be signed and this is --

18 THE WITNESS: Okay. Well, it was electronically  
19 transmitted. I'm sorry.

20 MS. ROBESON: And that's fine. The record, I  
21 think at this point it's safe to say, will be open to  
22 another date.

23 THE WITNESS: Okay.

24 MS. ROBESON: I'm going to announce that date  
25 tonight but they, I'm going to return this to you --



1 THE WITNESS: Okay.

2 MS. ROBESON: -- and they, if they feel, they can  
3 resubmit the letter with a signature on it. Thank you.

4 THE WITNESS: Thank you. Is that all?

5 MS. ROBESON: You can be excused.

6 MR. HARRIS: Yes. Thank you.

7 THE WITNESS: Thank you.

8 MS. ROBESON: Okay. Mr. Harris?

9 MR. HARRIS: Oh, I'm sorry. Elizabeth Natsios.

10 MS. ROBESON: Ms. Natsios, please raise your right  
11 hand.

12 (Witness sworn.)

13 MS. ROBESON: Go ahead.

14 MS. NATSIOS: My name is Elizabeth Natsios at 1221  
15 Dale Drive, Silver Spring.

16 DIRECT EXAMINATION

17 BY MR. HARRIS:

18 Q I see you as well have a letter or statement  
19 there. You're welcome to read that or add to it as you  
20 wish.

21 A I support the Chelsea Court proposal from EYA  
22 because it offers attractive practical housing in a  
23 wonderful location, a location that was not so wonderful  
24 when I first moved here to the area over 20 years ago. The  
25 EYA proposal will replace the cracked parking lot, the chain



1 link fence and the school building whose architecture can  
2 best be described as functional except for the doorway which  
3 is very nice. The EYA proposal will replace these with  
4 townhomes and parks.

5           One aspect of the EYA proposal that makes it  
6 interesting and attractive is the mixture of old and new.  
7 When you ask people why they like living in an area, of  
8 course they often mention the advantages of an easy commute,  
9 good schools nearby, easy access to shopping and other  
10 amenities but the feel of a community, what sets it apart  
11 from other places, this sense of pride of place is due in no  
12 small part to the landmarks and the landscaping we have  
13 saved and maintained. EYA proposes to restore the 19th  
14 Century house on the property. Certainly, you are familiar  
15 with other projects they have done and you are aware of the  
16 quality of the work and the care it takes incorporating new  
17 construction into old neighborhoods.

18           This area, the Mid-Atlantic Region, developed in a  
19 different way from other parts of the East Coast. In  
20 particular, New England where almost every piece of land is  
21 part of a city or town. For those familiar with that area,  
22 you know about the signs, the open books telling you you are  
23 entering Concord, leaving Concord, entering Natick, leaving  
24 Natick. You always know where you are. There is a center  
25 of town often quite distinctive so you have a sense of



1 place. It's a place that grew on its own over the decades.

2 And here in the Mid-Atlantic, it can be harder, especially  
3 for newcomers, harder to find that sense of place so keeping  
4 the buildings from other eras becomes all the more  
5 important. These buildings give our communities distinctive  
6 landmarks in different layers from different eras.

7 When people ask me where I live, my response  
8 invariably invokes comments about the wonderful old trees  
9 and what pleasure they get in just driving through.

10 Downtown Silver Spring is surrounded with old neighborhoods  
11 shaded and sheltered by grand old trees. If the zoning  
12 approval goes through, then 76 more households will have the  
13 chance to become part of Old Silver Spring and enjoy walking  
14 these really nice neighborhoods around the downtown and all  
15 of the adjacent neighborhoods will have new neighbors to  
16 welcome, new neighbors with whom we residents in the  
17 surrounding neighborhoods have much in common. After all,  
18 we chose to live in this area for many of the same reasons.

19

20 What we have before us is a proposal that mixes  
21 the practical and the aesthetic, the old and the new, the  
22 historic and the yet to be historic, a proposal that will  
23 transform a vacated property into something new. It can be  
24 a vibrant and stable part of the community and its new  
25 residents will in turn add to the unfolding story of Silver



1 Spring. I ask, therefore, that you approve this zoning  
2 change so that EYA can transform its proposal into reality.

3 Thank you.

4 MR. HARRIS: Thank you very much. I have no  
5 further questions.

6 MS. ROBESON: Mr. Brown, any questions?

7 MR. BROWN: Just a couple.

8 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

9 BY MR. BROWN:

10 Q Ms. Natsios, you live on the other side of  
11 Colesville Avenue?

12 A I do. I live in the adjacent Woodside Park  
13 community.

14 Q You talked about grand old trees. Do you know  
15 whether or not a number of grand old trees on this property  
16 will be removed as a result of the development proposal if  
17 approved?

18 A When I talk about it, I'm actually, I'm  
19 considering the townhouse as part of the entire neighborhood  
20 on that side of Colesville Road.

21 Q Well, I'm asking you about this particular project  
22 and whether you are aware of how many grand old trees are  
23 going to be removed for this project?

24 A No.

25 Q Is there anything about this project that you



1 think is better by virtue of the fact that it's 76 units as  
2 opposed to say half as many units?

3 A Is there an advantage to 76 as opposed to half?  
4 Is that your question?

5 Q Yes.

6 A Is there an advantage? I don't know.

7 MR. BROWN: Nothing further.

8 MS. ROBESON: Okay. Just a minute. Is there  
9 anyone else that has questions? Okay. You may be excused.

10 MR. HARRIS: Back to me. Mr. Ken Fuller.

11 MS. ROBESON: Mr. Fuller, please raise your right  
12 hand.

13 (Witness sworn.)

14 MS. ROBESON: Thank you. Please state your name  
15 and address for the record.

16 MR. FULLER: Sure. It's Kenneth Fuller, and it's  
17 8912 Flower Avenue and -- thanks.

18 DIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q Go ahead.

21 A Yeah. I'm supportive of the EYA project and  
22 there's really three, three aspects that make me supportive  
23 of it. First of all, I've lived -- I live on Flower Avenue.  
24 It's just about a mile from the site, and I live there with  
25 my wife and two children. We've lived there for about seven



1 years and lived in Silver Spring and really, within that  
2 general area, for the last 11 years since we moved to this,  
3 to this community, to the D.C. Metropolitan Area.

4           And we love Silver Spring. We love the character  
5 of Silver Spring. We love downtown Silver Spring and its  
6 amenities. Another aspect of it that we love is the  
7 diversity. We find it to be particularly diverse when  
8 compared to a lot of the different other neighborhoods and  
9 communities like Arlington or Bethesda and other, other  
10 places where we have options to live. And so when we think  
11 about where we want to live in this area for the long-term,  
12 it's near downtown Silver Spring.

13           One of the struggles is the fact that there's not  
14 new housing. There's -- we live in a house that was built  
15 in 1946 and when we look at various options and we look at  
16 what's on the market, there's very limited new housing so  
17 one of the reasons we're supportive is just because we think  
18 it's great to add new housing to walkable downtown Silver  
19 Spring.

20           And again, we think that the benefits of the  
21 diversity of Silver Spring is really appealing and we think  
22 that that is, I guess, enhanced by some of these options,  
23 having, you know, 76 units, having, you know, more people.  
24 I think that, you know, townhouse communities attract a lot  
25 of different types of folks, younger families, transit-



1 oriented folks and it just adds to the different types of  
2 diversity.

3 And the last thing that makes me supportive of it  
4 is that when we found out that EYA was developing it, we  
5 were very excited. We had just seen a number of other EYA  
6 developments around the general vicinity and they seem to be  
7 top-notch in terms of quality, aesthetics and integration  
8 within the community. So those are all the reasons why  
9 we're supportive.

10 Q Okay. Well, thank you for your support. I have  
11 no other questions.

12 MS. ROBESON: Mr. Brown?

13 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

14 BY MR. BROWN:

15 Q Mr. Fuller, you live, you said you live a mile  
16 away?

17 A Yes.

18 Q That's outside of the boundaries of the south, the  
19 Seven Oaks-Evanswood Citizens Association, right?

20 A Correct.

21 MR. BROWN: I have nothing further.

22 THE WITNESS: Thanks.

23 MS. ROBESON: Okay. Anyone else? Yes. Please  
24 state your name for the record.

25 MS. VOLK: Song Volk, 8504 Springvale Road.



1 CROSS-EXAMINATION BY MS. VOLK

2 BY MS. VOLK:

3 Q Just a couple questions.

4 A Um-hum.

5 Q Are you interested in moving into that EYA  
6 development?

7 A Possibly.

8 Q Do you know the pricing for these townhouses if  
9 they will be built?

10 A Not specifically.

11 Q How much are you roughly willing to pay for some  
12 sort of housing in the Silver Spring area?

13 A Hard to say. Depends on a number of different  
14 aspects, you know, what's the quality level, what, when does  
15 it happen, what can I afford at that time. It's hard for me  
16 to answer that right now.

17 Q Right. But maybe like a minimum ceiling or a  
18 maximum ceiling. Can you give me like a range?

19 A I'm uncomfortable with doing that.

20 Q Okay. And do you think you'll be able to afford  
21 these townhouse development units?

22 A Possibly. Again, it's hard to say.

23 Q Okay. And if EYA builds on the Chelsea School  
24 area, will you definitely sell your house in Takoma Park and  
25 try to go into these units?



1           A     It's possible but I can't say for sure.

2           Q     Okay. Thank you.

3           A     Okay.

4                 MR. HARRIS: Nothing from --

5                 MS. ROBESON: Any redirect?

6                 MR. HARRIS: No. Thank you very much for taking

7 your time to come.

8                 THE WITNESS: Thank you.

9                 MS. ROBESON: Thank you.

10                MR. HARRIS: Next is this Lew or Len Winarsky?

11                MR. WINARSKY: Yes. It's Lew.

12                MR. HARRIS: Yes. Lewis. I thought after I said

13 that. Thank you.

14                MR. WINARSKY: All right.

15                MS. ROBESON: Please raise your right hand.

16                (Witness sworn.)

17                MS. ROBESON: It's not Your Honor but go ahead.

18 But go ahead. State your name and address for the record,

19 please.

20                MR. WINARSKY: Sure. It's Lew Winarsky, and it's

21 1212 Woodside Parkway, Silver Spring.

22                         DIRECT EXAMINATION

23                BY MR. HARRIS:

24           Q     Okay. I see you as well have a letter. You can

25 read that, you can talk outside of that. Whatever you wish



1 to say.

2           A     Sure. Sure. In summary, my wife and I support  
3 the project. We live in Woodside Park and have for the last  
4 26 years. We regularly walk in the neighborhoods  
5 surrounding the Chelsea Court project. I'm also the owner  
6 and manager of multi-family properties a few blocks away on  
7 the Long Branch area. I believe, we believe that the  
8 proposed development is good for the immediate residential  
9 and business communities and it represents real and positive  
10 contributions to the greater Silver Spring and Montgomery  
11 County area.

12               I read the analyst's report before Park and  
13 Planning and I think it does a very good job of outlining  
14 the benefits. Certainly, the testimony that I've heard  
15 today also explains the positive benefits of it and I don't  
16 intend to repeat it other than to say that I believe that  
17 the projects represent many of the qualities that originally  
18 encouraged my wife and I to move to Silver Spring. Chelsea  
19 Court will maintain a diverse community, the ability to walk  
20 to Silver Spring's many public and commercial amenities and  
21 the transportation centers while reducing peak rush hour  
22 traffic in the neighborhood with increased accessibility to  
23 park and open spaces.

24               I followed EYA's work in the area. Cameron Hill  
25 near the Silver Spring Metro is a decided improvement over



1 the blank parking lot that occupied the site. It has made a  
2 contribution in a very real sense, in the sense of community  
3 in that area and also helps to support new businesses in the  
4 area. The National Park Seminary community is an example, I  
5 think an excellent example of imaginatively creating a  
6 community that employs and maintains a parklike setting  
7 while effectively incorporating unique and numerous  
8 historically significant buildings. Both are substantial,  
9 as I say, contributions to the greater community.

10 I think generally, my impression is that EYA has a  
11 history of creating coherent and pleasing and thoughtful  
12 communities and I believe that if Chelsea Court is, becomes  
13 a reality, it will again in this case as well.

14 Q Thank you very much.

15 MR. HARRIS: I have no other questions.

16 MS. ROBESON: Mr. Brown, do you have any  
17 questions?

18 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

19 BY MR. BROWN:

20 Q I'm sorry. What was your last name again?

21 A Winarsky. I have no family in Milwaukee.

22 Q Mr. Winarsky, you don't live in the SOECA  
23 neighborhood, do you?

24 A I live across the, across Colesville Road. That's  
25 correct.



1           Q     You mentioned something about the notion that you  
2     like this project because you think it's going to reduce the  
3     traffic flow, is that right?

4           A     I believe it will, yes.

5           Q     Do you think that the traffic flow would increase  
6     if they reduced the number of units below 76 to say half as  
7     many?

8           A     Well, I believe when I talk about traffic flow,  
9     I'm talking about the, the use of automobiles by the  
10    residents of the area and certainly, I believe the larger  
11    the number of units, the fewer the necessity for employing  
12    automobiles to go to Metro. And certainly, my wife and I,  
13    we, when we go to the movies or the restaurants in downtown  
14    Silver Spring, we walk. It's a 10 minute walk from our  
15    house. And Chelsea Court is, would be approximately the  
16    same distance. And I know my neighbors, when they go to  
17    Silver Spring walk as well, so I think the answer to your  
18    question is on the whole, yes.

19               MR. BROWN: Nothing further.

20               MR. HARRIS: I have one follow-up if I may.

21               MS. ROBESON: Well, let me just see if anyone in  
22    the audience.

23               MR. HARRIS: Oh, sure.

24               MS. ROBESON: Is there any questions from anyone  
25    else? Okay. For the record, the answer is no. Seeing



1 nothing, go ahead.

2 REDIRECT EXAMINATION

3 BY MR. HARRIS:

4 Q Mr. --

5 A Winarsky.

6 Q -- Winarsky.

7 A Right.

8 Q Are there townhouses adjacent to the Woodside Park  
9 neighborhood where you live?

10 A There are. There are several communities, one of  
11 which is a relatively new community on Georgia and Woodside.

12 Q Do you find those to be detrimental to your  
13 community at all?

14 A No. Uhn-uh. No.

15 Q Thank you. Thank you.

16 MS. ROBESON: You can be excused.

17 THE WITNESS: Thank you.

18 MS. ROBESON: Thank you.

19 MR. HARRIS: John Bernstein.

20 MS. ROBESON: Please raise your right hand.

21 (Witness sworn.)

22 MS. ROBESON: Please state your name and address  
23 for the record.

24 MR. BERNSTEIN: My name is Jonathan Bernstein and  
25 I live at 9224 Kingsbury Drive in Silver Spring.



1 MS. ROBESON: Okay.

2 DIRECT EXAMINATION

3 BY MR. HARRIS:

4 Q I apologize. Jonathan Bernstein. Would you  
5 either read your statement or speak as you wish?

6 A Yes. I live off of Ellsworth Drive across Dale  
7 Drive from the Chelsea School. I'm a member of SOECA and  
8 help moderate the SOECA list serv. I distribute newsletters  
9 and other activities. Chelsea School has been a good  
10 neighbor in the community for many years and I hope they're  
11 able to relocate and continue their mission.

12 I do actually empathize with the Springvale  
13 neighbors against the project and I listened to a lot of  
14 their statements to the Planning Board because they very  
15 reasonably would prefer no change across the street from  
16 them but the current arrangement is going to change when  
17 Chelsea School moves and the only question is how it will  
18 change. And I'd like to explain why I support the EYA  
19 proposal for this, for this change.

20 My wife and I walk down Ellsworth Drive to and  
21 from downtown Silver Spring at all hours but the Springvale  
22 neighbors' prize, that Chelsea School is completely quiet at  
23 night, has not always been necessarily so good for us. That  
24 block on Ellsworth is known as a dead zone at night that  
25 some other SOECA neighbors avoid. My hope and expectation



1 is that EYA's project will enliven that area, that a  
2 friendlier pedestrian path will be down that block of  
3 Ellsworth, that there will be more eyes on the street,  
4 particularly with EYA's redesign that I'll mention again in  
5 a minute and with the self-selection of residents to a  
6 project where EYA's mantra is life within walking distance,  
7 more people walking in the neighborhood.

8           Also, everything I've read and heard about EYA  
9 reveals a level of quality and community concern that's  
10 reassuring to me. For example, with the likely desirability  
11 and pricing of the townhomes, I don't think there's any  
12 reasonable fear that the project will lower housing values  
13 or cheapen the neighborhood.

14           I've also really been impressed at how seriously  
15 EYA has listened to the Springvale neighbors who are most  
16 concerned about the project. EYA incorporated these  
17 neighbors' suggestions, for example, to remove the existing  
18 entrance on Springvale and limit the ingress and egress to  
19 Ellsworth and Pershing and to reposition a whole layer of  
20 the townhomes facing Springvale to dramatically increase the  
21 setback. And that, to me, will make the project more  
22 amenable to everyone on that block of Springvale, even those  
23 who really oppose it now. The other point is that the  
24 redesign also pushed some of the townhouses closer to  
25 Ellsworth for more eyes on the street when we are walking.



1           I am not really saying the community would get  
2   what EYA is promising if detached single-family homes were  
3   instead developed on the plot. The open space that EYA I  
4   understand is providing a permanent easement would be a  
5   contribution to community green between downtown Silver  
6   Spring and Sligo Creek.

7           I guess the last point I would make is that I  
8   can't claim to be a planning expert but I really probably  
9   think that any newly crafted plan of the area would probably  
10   earmark the Chelsea School property for a notch up in  
11   density because of its size, its walkable proximity to  
12   downtown Silver Spring and Metro and the newly mature policy  
13   of smart development. If schools have used that plot for  
14   many years and if the existing master plan, when last  
15   revised, didn't explicitly consider what would happen if  
16   Chelsea School left, that at least suggests a little less  
17   fealty to the single-family home zoning of the plot.

18         Q     I have no questions.

19             MS. ROBESON: Okay. Mr. Brown, do you have any?

20             MR. BROWN: Yes.

21             CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

22             BY MR. BROWN:

23         Q     Mr. Bernstein, I gather you're somewhat enamored  
24   of EYA as a townhouse developer and you'd like to see them  
25   develop in your neighborhood.



1           A     Yeah. Well, I hadn't had any real exposure to EYA  
2 before they came to one of the first SOECA meetings and made  
3 a presentation, and I was impressed by them, yes.

4           Q     Are you concerned that EYA might go away if they  
5 don't get the development density that they're seeking?

6           A     I do have the sense that they have put together a  
7 project that to them, is economically viable and I'm not in  
8 commercial real estate so I don't know what levels of  
9 viability there are so I, I don't really have a view about  
10 that.

11          Q     Let me restate my question. Are you concerned  
12 that they might go away if they don't get the level of  
13 development they feel they need?

14          A     Concerned? I wouldn't say I'm concerned. I will  
15 tell you what my assumption is and I'm having trouble  
16 responding directly to your question. My assumption is that  
17 if EYA is permitted to build the project, they will and if  
18 they're not permitted to build the project, they won't. And  
19 I think frankly, I'm impressed by them so I don't know what  
20 will, what would actually come to that lot other --

21          Q     I --

22          A     -- you know, if, if they don't.

23          Q     I don't want to argue with you, Mr. Bernstein, but  
24 my question is a very simple one. Have you ever expressed  
25 or thought of concern that if they get approval to build at



1 something like an R-8 density level rather than an R-15  
2 density level, they'll walk away and you'll no longer have  
3 your desired developer developing the property?

4 A I just, I never heard that suggestion before now  
5 and, and haven't been concerned about it, no.

6 Q In other words, you've never heard it bandied  
7 about in the community that EYA needs a certain level of  
8 development in order to stick around and build this project?

9 A That, that I had heard. That's what they told us.

10 Q They need R-15 development.

11 A Well, I think the context in which it came up was  
12 the number of units that they were proposed to build where  
13 communities are used to negotiating with developers about  
14 how many units there should be, and they made a presentation  
15 to us that I remember very well saying that they really had  
16 tried to come together with the minimum number of townhouses  
17 that were viable for the project and I have to admit, I  
18 haven't really tried to get behind that.

19 Q Are you aware, Mr. Bernstein, that if the project  
20 were developed at the current zoning of R-60 with a cluster  
21 method of development, including MPDU units, that they could  
22 put a minimum of 60 percent townhomes on the property and  
23 possibly as high as 100 percent townhomes on the property  
24 with Planning Board approval?

25 A I don't understand.



1           Q     Let me restate the question. Are you aware that  
2 without changing the existing zoning on the property, which  
3 is R-60, they could submit a site plan for R-60 cluster  
4 development with MPDU townhomes and regular townhomes with  
5 at least 60 percent of the units on the property being  
6 townhomes and possibly as high as 100 percent with Planning  
7 Board approval?

8           A     I was under the assumption that the existing  
9 zoning is for detached single-family homes.

10          Q     Whether the property is developed with detached  
11 single-family homes, duplexes or townhomes, wouldn't any of  
12 those developments eliminate the dead zone concern that you  
13 have for this property?

14          A     It's possible. I don't know. I mean, my sense is  
15 that the more people walking there, the better and, and, you  
16 know, thinking about it, my assumption is that people who  
17 are most likely to move into EYA are more likely to walk and  
18 that would maximize the level of walkers in the  
19 neighborhood. What else, you know, what other, you know,  
20 gradations of that, I hadn't really thought about.

21          Q     Thank you very much.

22               MR. HARRIS: Nothing further.

23               MS. ROBESON: Okay. Anyone have any other  
24 questions for this witness? All right. You may be excused.  
25 Thank you.



1           MR. HARRIS: Thank you very much, Mr. Bernstein.  
2   And then one last one is Liz Brent. Thank you for coming.

3           MS. ROBESON: Ms. Brent, please raise your right  
4   hand.

5           (Witness sworn.)

6           MS. ROBESON: Please state your name and address  
7   for the record.

8           MS. BRENT: My name is Liz Brent, Elizabeth Brent.  
9   My address is 8615 Mayfair Place, Silver Spring, Maryland  
10   20910.

11                               DIRECT EXAMINATION

12           BY MR. HARRIS:

13         Q    Ms. Brent, I see you have a statement there as  
14   well. If you wish to read that, please go ahead.

15         A    Sure. My name is Liz Brent. My husband and I  
16   have three children and have lived in the immediate Chelsea  
17   School neighborhood for 15 years. We've made close friends  
18   here and our community is extremely important to us. We  
19   live one block from the site. We love living next to  
20   downtown Silver Spring. We regularly walk to Strosniders,  
21   Borders, restaurants along Ellsworth, AFI and other shops  
22   and stores. The new ice rink was a big deal in our  
23   household with both my 12-year-old son and 9-year-old  
24   daughter gathering with friends there. My husband and I  
25   encourage the independence that downtown Silver Spring



1 offers our children.

2               We live a stone's throw from Ellsworth so the  
3 route to downtown is up Ellsworth, past the library on the  
4 right and the chain link fencing surrounding the parking lot  
5 in what I call the leftover land of the Chelsea School  
6 grounds on the left. Just past that on the right is the  
7 back of the high-rise apartment building and its loading  
8 dock and on the left, the side view of the single-family  
9 house high above the street. It's an unpleasant long block,  
10 not a well-cared for area. At dusk and at night, it's a  
11 dark unneighborly stretch.

12              While I would love to see life, lighting and  
13 neighbors on that block, I also think it would be a real  
14 shame if this large piece of land was footed away on 5,000  
15 square foot single-family colonials. We do have two  
16 groupings of newer larger homes in the neighborhood. Those  
17 owners have become neighbors and friends and while those  
18 homes serve well the needs of some, the Chelsea land is too  
19 close to downtown and too valuable as higher density housing  
20 to go to single-family.

21              Frankly, I also cringe at the thought of each  
22 owner of the single-family housing tract personalizing and  
23 working to make private their slice of attempted suburbia in  
24 a not so very suburban location. I picture a scary variety  
25 of decks, fencing, hardscape, landscape and paint colors all



1 in a setting of few mature trees that would otherwise serve  
2 to unify a neighborhood. EYA is known for high-quality  
3 architecture and detailing and I feel confident that our  
4 neighborhood and the general area would be well served with  
5 the zoning change.

6 Q Thank you very much.

7 MR. HARRIS: I have no questions.

8 MS. ROBESON: Mr. Brown?

9 CROSS-EXAMINATION BY COUNSEL FOR OPPOSITION

10 BY MR. BROWN:

11 Q Ms. Brent is it?

12 A Yes.

13 Q Your opinion that the property is too valuable to  
14 be relegated to 5 or 6,000 square foot single-family  
15 development is, I'm not sure what the right word is,  
16 amplified, nourished or supported by your experience and  
17 occupation, isn't it?

18 A It is if you're referring to the fact that I'm a  
19 realtor.

20 Q Well, you didn't mention your occupation.

21 A Yes.

22 Q Why don't you --

23 A I am.

24 Q -- tell us what that is.

25 A I'm a real estate agent in the neighborhood. It



1 is too valuable for a piece of land, in my opinion, that  
2 close to the urban area of downtown Silver Spring to be used  
3 as single-family housing, different from the cluster right  
4 around the corner which is a cluster development on Woodside  
5 Parkway and Ellsworth of large colonials. I consider it a  
6 very different location.

7 Q Is it too valuable for say half as many as 76  
8 units?

9 A I think that if the developers can get a plan  
10 together that looks good and that will allow more people to  
11 be walkable to Metro, to be walkable to all of the things  
12 that we enjoy walking to and that won't, that will use well  
13 very valuable land, then, yes. I think that a higher  
14 density is appropriate.

15 Q And you specialize --

16 A I can --

17 Q You specialize in selling residences to families  
18 in your, in that neighborhood, correct?

19 A Yes.

20 Q And so a project with 76 potential sales  
21 opportunities would be better than one with say 30 potential  
22 sales opportunities from your economic perspective.

23 A You don't know me well.

24 Q I'm just asking you to answer the question.

25 A Yeah. The answer is potentially. And let me tell



1     you the flack that I've taken from --

2                 MS. ROBESON:   Okay, ma'am.   Ma'am.

3                 THE WITNESS:   Sorry.

4                 MR. BROWN:    I have nothing further.

5                 MS. ROBESON:   Okay.   Anyone else have questions?

6     Yes, Ms. Volk.

7                 MS. VOLK:    Song Volk.   8504 Springvale Road.

8                         CROSS-EXAMINATION BY MS. VOLK

9                 BY MS. VOLK:

10                Q     Do you, in your job, help people buy and sell  
11     townhouses?

12                A     Sell, yes.

13                Q     How much commission does a person typically get, a  
14     sales agent typically get in the sale and commission of  
15     townhouses?

16                A     It varies.   I mean --

17                 MR. HARRIS:   Objection.   This is beyond the scope  
18     of her testimony and completely irrelevant.

19                 MS. ROBESON:   Well, it's cross-examination and I  
20     think it goes to bias so she can continue.   Can you answer?

21                 THE WITNESS:   Sure.

22                 MS. ROBESON:   Do you want her to repeat the  
23     question?

24                 THE WITNESS:   No.

25                 BY MS. VOLK:



1           Q     I can repeat it if you want.

2           A     It, it -- what I will earn on my commission will  
3 range from, well, my company's commission will range from  
4 typically two-and-a-half percent to three percent and the  
5 last townhouse I sold, no, it wasn't a townhouse, actually  
6 an MPDU, but I don't remember the last townhouse I sold.

7                   MS. ROBESON: Then I mean --

8                   BY MS. VOLK:

9           Q     But typically, for townhouses, percentage-wise,  
10 how much would you typically make?

11          A     Well, it's the same as anything else. I mean,  
12 it's two-and-a-half to three percent typically.

13          Q     Okay.

14          A     To my broker.

15          Q     Okay. And you stated this in your testimony but I  
16 just want to confirm that I understood this correctly, that  
17 you prefer, in a thoroughly like aesthetically and  
18 visually --

19          A     Yes.

20          Q     -- the townhouse developments are more appealing  
21 than --

22          A     Yes.

23          Q     -- perhaps single-family homes.

24          A     Yes.

25          Q     Okay. And you cater to both townhouse, people



1 interested in townhouses and single-family homes.

2 A Well, when you say people with interest, I don't  
3 work with buyers personally.

4 Q You work with sellers.

5 A I work with sellers.

6 Q Okay. Do your sellers of your single-family homes  
7 realize that you find their homes not as visually appealing  
8 as townhouses?

9 A Well, that's not the case.

10 MS. ROBESON: Yes. I --

11 THE WITNESS: We're talking about --

12 MS. VOLK: Okay.

13 MS. ROBESON: That, I don't see the relevance  
14 about that.

15 MS. VOLK: I'm sorry about that.

16 BY MS. VOLK:

17 Q My last question is do you believe that through  
18 your activities here that -- actually, one more question.  
19 Do you know what kind of pricing that these townhouses might  
20 come on the market if EYA develops these townhouses?

21 A We're talking about a couple of years away so, you  
22 know, the same information that's out there to you is out  
23 there to me, whether it be the townhouses on Georgia Avenue  
24 so --

25 Q Okay. Last question. Do you believe that through



1 your actions here and your support of EYA that you'll be  
2 able to establish some sort of cooperative professional  
3 relationship with EYA --

4 A No.

5 Q -- once these townhouses come?

6 A No. EYA has their own sales staff.

7 Q Okay. Thank you.

8 MS. ROBESON: Any other questions? Okay. Mr.  
9 Harris, redirect?

10 REDIRECT EXAMINATION

11 BY MR. HARRIS:

12 Q Ms. Brent, you were going to expand on your answer  
13 there about taking some flack. I feel, say thank you for  
14 coming.

15 A It's been a long week and yeah. Sorry.

16 Q So did you want to add something to your testimony  
17 there about your presence here today?

18 A You know, I, I just walked in. My partner's on  
19 vacation.

20 Q Okay.

21 A It's been a crazy week. I will say this. You  
22 know, I apologize for speaking sharply to you. I, it has  
23 been a long road the past, I don't know how long it's been,  
24 a year or two years. My instant thought when I heard that  
25 EYA or when I heard that Chelsea, even before I knew that



1 EYA was involved at all, although they may have been at that  
2 point, the word wasn't out, that Chelsea was going to be  
3 selling was that EYA should put townhouses there, and that's  
4 just exactly how strongly I feel about it.

5 I, yes, it is feasible. I don't, I don't work  
6 with buyers directly. It is, it is feasible that my  
7 partner, I presume that my partner would be happy to sell  
8 those EYA townhouses just like she sold one at Seminary.  
9 Yes. It is very possible that down the road as people buy  
10 and then sell, hopefully, they'll be calling me just like I  
11 would hope that anybody in the neighborhood would call me.  
12 It's been, it's been tough with -- I think that some of  
13 these folks would argue that I am doing myself more damage  
14 in the neighborhood than benefit by speaking as strongly as  
15 I have about a topic that I feel very, very strongly about.

16 Q Thank you.

17 MS. ROBESON: I have one question. I think what I  
18 hear Mr. Brown suggesting is that maybe it's not a matter of  
19 single-family detached homes versus townhouses. Maybe it's  
20 a matter of mass and density and scale.

21 THE WITNESS: Um-hum. Um-hum.

22 MS. ROBESON: And that is part of compatibility.  
23 So I guess the question for, I have the question, you know,  
24 what, considering the mass, density and scale, are you  
25 familiar with the cluster provision in the R-60 Zone?



1           THE WITNESS: I am familiar with the cluster  
2 provision as it extends to single-family housing in R-60.  
3 The cluster, I believe, I mean, I'm not, you know, I have  
4 done a good number of new construction projects, single-  
5 family but they've been infill lots so I'm not here to speak  
6 about --

7           MS. ROBESON: Okay.

8           THE WITNESS: -- larger developments. I am  
9 familiar because the one on Woodside Parkway and Ellsworth  
10 is a, is a cluster format. That's my familiarity with it,  
11 so I'm not sure if I, if I answered your question.

12          MS. ROBESON: Yes. You did. Are there any  
13 questions based on, solely on my question? All right. You  
14 may be excused. Thank you for coming down.

15          THE WITNESS: Thank you.

16          MR. HARRIS: Thank you very much.

17          THE WITNESS: Thank you.

18          MR. HARRIS: I appreciate it. Okay. I think --  
19 oh, I'm sorry. Yes. Can we, do you have an extra copy  
20 of --

21          THE WITNESS: I don't.

22          MR. HARRIS: -- that or can we make a copy of  
23 that?

24          THE WITNESS: I have this copy. You may keep it.

25          MR. HARRIS: Yes. Okay. Can we have that



1 introduced, the statement she read?

2 MS. ROBESON: Mr. Brown, do you have an objection?

3 MR. BROWN: No problem.

4 MS. ROBESON: Okay.

5 MR. HARRIS: Thank you very much.

6 MS. ROBESON: That will be 119.

7 MR. HARRIS: Thank you very much. Appreciate  
8 that.

9 (Exhibit No. 119 was marked for  
10 identification and received into  
11 evidence.)

12 MR. HARRIS: And then I think we're back to Mr.  
13 Youngentob if I can recall. There's no one else we have to  
14 accommodate?

15 (Discussion off the record.)

16 MR. HARRIS: Ms. Robeson, one of our expert  
17 witnesses can make childcare arrangements and stay as late  
18 as we're willing to stay but he wanted to find out what time  
19 to tell his folks that we might adjourn.

20 MS. ROBESON: Well, I'm willing to go late. How  
21 many witnesses do you have?

22 MR. HARRIS: Okay. We have the rest of Mr.  
23 Youngentob and then we have three professional witnesses.

24 MS. ROBESON: Three. Okay. Mr. Brown?

25 MR. BROWN: My, my clients --



1 MS. ROBESON: Do you have anymore witnesses that  
2 wish to testify today I guess is --

3 MS. SPIELBERG: I think part of it may depend on  
4 when the continue date is. Is it definitely to be --

5 MS. ROBESON: Okay. We have, during the breaks,  
6 I've looked up two potential dates if necessary. One is the  
7 June 30th date that we previously discussed but when I saw  
8 so many people, we also have a June 27th date that we could  
9 accommodate some testimony. If anyone has a conflict, what  
10 I would like to do is go to 7:00 tonight if we can do that.  
11 Well, in --

12 MR. BROWN: My right-hand person is Anne Spielberg  
13 here and she has, she has been gone all day basically and  
14 she's told me that she desperately needs to leave at 5.

15 MS. SPIELBERG: You know, I have children. I have  
16 made arrangements up to a certain time but they're going to  
17 be waiting to be picked up. I did try to make arrangements  
18 so we could go for, you know, a full day but, and I think  
19 there are other, there may be other people with that same  
20 issue. We do have one person who, I just need to check, I  
21 think there is one person who will be out of the country on  
22 those two dates.

23 MS. ROBESON: Okay.

24 MR. HARRIS: I'm unclear. Are you saying you  
25 don't think we should go to 7?



1                   MS. SPIELBERG: Yeah. I think 7 is just, I would  
2 really ask that we not go that late. It's just very late  
3 and --

4                   MS. ROBESON: Well, unfortunately, we had the  
5 delay this morning and I understand your position. Who is  
6 going to be out of the country for those two dates? I see  
7 one hand. Okay.

8                   MR. BERNSTEIN: I will not be out of the country.  
9 I will be on vacation on those two dates.

10                  MS. ROBESON: Okay. Both dates?

11                  MS. SPIELBERG: It's the same, the same week.

12                  MR. BERNSTEIN: The 27th through the 30th.  
13 They're the same week.

14                  MS. ROBESON: Okay. And --

15                  UNIDENTIFIED SPEAKER 1: I will be out that week.

16                  UNIDENTIFIED SPEAKER 2: And I will be out that  
17 week.

18                  MS. ROBESON: Well, I guess my concern is this. I  
19 cannot, with all these people, it is very difficult to  
20 accommodate everyone's schedule because once I postpone it  
21 to July, the conflicts are going to be even worse. I would  
22 like to, in fairness to Mr. Harris because unfortunately,  
23 what happened this morning happened this morning, Mr.  
24 Harris, let me hear from you.

25                  MR. HARRIS: We very much would like to go to



1 7:00. We lost half of our day or whatever hours or minutes  
2 we lost this morning not through our request but through the  
3 request of the opposition, so I think it would be a bit  
4 unfair for them to be suggesting that we should end at 5.  
5 Mr. Brown is a very capable attorney and can certainly  
6 represent his clients well with or without Ms. Spielberg.

7 MS. ROBESON: Do you have anyone here that can  
8 take -- I know that probably her shoes are difficult to  
9 fill. Is there anyone else that you could --

10 MR. BROWN: If I can --

11 MS. ROBESON: The other option, I mean --

12 MR. BROWN: If we can get --

13 MS. ROBESON: You have how many experts, Mr.  
14 Harris?

15 MR. HARRIS: There are three.

16 MS. ROBESON: All right. And we haven't finished  
17 mister -- okay. Go ahead. I'm sorry.

18 MR. BROWN: If we could get the witnesses who are  
19 going to be out of the, out of town toward the end of June  
20 and Ms. Spielberg's testimony in today, I'm willing to stay  
21 late in her absence.

22 MR. HARRIS: Well, wait a minute. Ms. Spielberg  
23 could come back on the 27th.

24 MS. SPIELBERG: No. I can't on the 27th.

25 MR. HARRIS: On the 30th then.



1                   MS. SPIELBERG: I'm going to have to cut short a  
2 vacation. I'm taking my father to the doctor. I have to go  
3 out of town to deal with him. I may possibly be able to  
4 rearrange it and come back on the 30th but I am out on that,  
5 at the beginning of that week at least.

6                   MS. ROBESON: Well, we had already discussed the  
7 30th.

8                   MS. SPIELBERG: I understand the 30th. Yes, I do.  
9 I know that. The 27th, I absolutely cannot do.

10                  MS. ROBESON: But you could come back the 30th.

11                  MS. SPIELBERG: The original --

12                  MS. ROBESON: I mean, at this point, I'll do both  
13 dates.

14                  MS. SPIELBERG: I understand. The original idea  
15 when the 30th was presented was it was for, you know, one  
16 witness. I understand. I understand things have changed  
17 and the hope was at that point that I might not be needed  
18 because it would be, you know, one witness who Mr. Brown  
19 could deal with. It's just things have changed. But I  
20 definitely cannot do the 27th.

21                  MS. ROBESON: Well, the best I feel that I could  
22 do is, Mr. Brown, do you have someone else that if Ms.  
23 Spielberg can't come back and testify, I'd like to get some  
24 more done tonight because we're only one hour away from  
25 5:00.



1 MR. BROWN: Okay.

2 MS. ROBESON: And we haven't even gotten to Mr.  
3 Harris' experts. I'd like to proceed to 7. I understand,  
4 you know, that it places -- I think we've all been kind of  
5 dancing in difficult positions today and we try not to do  
6 this on a regular basis. If --

7 MR. HARRIS: I'm sorry. Go ahead. I'm halfway  
8 listening. I apologize.

9 MS. ROBESON: Who are the witnesses? We can  
10 finish Mr. Youngentob.

11 MR. HARRIS: Mr. Youngentob should not take long  
12 at all. Then we have Mr. Iraola, our land planning expert.

13 MS. ROBESON: And --

14 MR. HARRIS: That will be a lengthy presentation.

15 MS. ROBESON: That's right. And then who's your  
16 third witness?

17 MR. HARRIS: And then we have a traffic expert and  
18 our engineer. Both of those should be fairly brief.

19 MS. ROBESON: Okay. Mr. Brown, do you want to  
20 weigh in on this?

21 MR. BROWN: I can deal with all of those witnesses  
22 without Ms. Spielberg but she'll, she's going to probably  
23 leave when she has to leave.

24 MS. ROBESON: All right. Then we will get what --  
25 I think we'll go until 7.



1 MR. HARRIS: Thank you.

2 MS. ROBESON: And if your witness, your land use  
3 witness, because I'm getting the idea that he is going to be  
4 lengthy, if we can't finish him by 7, then we're going to go  
5 to the June 30th date and because that was the date. If you  
6 can't make, if people can't make the 27th, you know, June  
7 30th was kind of a backup date that we had already arranged  
8 among the parties so I don't want to, to vary from that  
9 commitment. So that's how we're going to go.

10 MR. HARRIS: Okay.

11 MS. ROBESON: All right? And I do apologize to  
12 everyone for the inconvenience. The other possibility is --  
13 oh, June 16th was what? That's another Planning Board day.  
14 Do either of you have -- the other possibility is if, you  
15 know, I'm trying to avoid Planning Board days again when we  
16 have an LMA. Do either of you, to your knowledge, have any  
17 conflicts on June 16th?

18 MR. BROWN: Yes.

19 MS. ROBESON: That's another possibility. Okay.  
20 So you have --

21 MR. BROWN: I have a --

22 MS. ROBESON: -- conflict on June --

23 MR. BROWN: I have a two hour oral argument in the  
24 Circuit Court but I don't know whether it's in the morning  
25 or the afternoon. I should be available one or the other,



1 half a day.

2 MS. ROBESON: The other, one other potential date  
3 I have is Monday, June 6th. Was that the date you had,  
4 Victoria?

5 UNIDENTIFIED VOICE: You said June 27th.

6 MS. ROBESON: I already posited that and --

7 UNIDENTIFIED VOICE: June 6th looks possible.

8 MS. ROBESON: I also have June 6th so let's, do  
9 you want to take a few minutes and think about that? Why  
10 don't we take a, you know, five minute recess and you can  
11 talk amongst yourselves, or let's make it 10 because there's  
12 a lot of people here. We'll take a 10 minute recess. You  
13 can talk about, talk amongst yourselves and maybe we can  
14 figure out, figure a way out of this. We have, Victoria, we  
15 have June 6th.

16 UNIDENTIFIED VOICE: June 6th, June 27th.

17 MS. ROBESON: June 27th, June 30th. I hear that  
18 you have a conflict on June 16th so that's out. So that's,  
19 that's what we have. All right. So I'm going to go off the  
20 record and we'll be back at 4:15 and hopefully, we'll be  
21 rejuvenated and someday, you know, this will end. But I do  
22 appreciate your patience.

23 MR. HARRIS: Thank you.

24 MR. BROWN: Thank you.

25 (Whereupon, at 4:03 p.m., a brief recess was



1 taken.)

2 MS. ROBESON: We are back on the record. It's  
3 4:20. I had this brief moment of wondering whether we had a  
4 magical solution to accommodate everyone. Is there --

5 MR. BROWN: I think we do.

6 MS. ROBESON: Okay.

7 MR. BROWN: I'm going to try and announce my  
8 understanding of it and see if I get agreement from Mr.  
9 Harris. We're not going to attempt to put any witnesses on  
10 today, even though there's some people who can't be here on  
11 one of those days coming up, but we are in agreement that  
12 all of our witnesses can be here either on the 6th or the  
13 30th of June.

14 MS. ROBESON: Okay.

15 MR. BROWN: And I will be here on both days.

16 MS. ROBESON: Okay.

17 MR. BROWN: Ms. Spielberg will be here at least on  
18 the 6th and she's made arrangements, she's released her  
19 husband to go pick up the kids and so we're --

20 MS. ROBESON: I was there I'm telling you. I feel  
21 your pain.

22 MR. BROWN: We're good to go with simply Mr.  
23 Harris' witnesses.

24 MS. ROBESON: Well, I do appreciate that  
25 accommodation and I do thank everyone because I know that it



1 is important to everyone, so I do appreciate your  
2 accommodation on that. Very well. Then we will go to -- I  
3 won't tell you about when they get to be teenagers because -  
4 - yeah. So anyway, we won't go there but I do appreciate  
5 the accommodation. We're going to go until 7 and, Mr.  
6 Harris, the ball is in your court. I see that you're  
7 postponing the redirect of your first witness and we have a  
8 new person here so can you please raise your right hand?

9 (Witness sworn.)

10 MR. BROWN: Ms. Robeson --

11 MS. ROBESON: Yes.

12 MR. BROWN: -- before we forget and get going on  
13 this, I would like to --

14 MS. ROBESON: Oh, I'm sorry.

15 MR. BROWN: I would like to renew my request to  
16 have admitted an exhibit which was rejected as unsigned but  
17 during the, one of the breaks, I got it signed by the  
18 author, Jim Humphries, and I would like to --

19 MS. ROBESON: Okay. Mister --

20 MR. HARRIS: Yes.

21 MS. ROBESON: See, there are some benefits to  
22 this. Mr. Harris, do you have an objection?

23 MR. HARRIS: I have no objection.

24 MS. ROBESON: Okay.

25 MR. BROWN: I have, actually, I've got signatures



1 on both.

2 MR. HARRIS: Oh, okay.

3 MS. ROBESON: Okay. So if I can just see them, I  
4 will mark them as 120 and 121. Okay. So 120 is going to be  
5 written testimony from the Montgomery Preservation.

6 MR. BROWN: Civic Federation.

7 MR. HARRIS: No, no. She's got this one first.

8 MR. BROWN: I'm sorry. Montgomery Preservation.

9 MS. ROBESON: Okay. And that will be Exhibit 120.  
10 And then 121 will be testimony dated 5/15/11 from the  
11 Montgomery County Civic Federation.

12 MR. BROWN: Thank you.

13 MS. ROBESON: Thank you.

14 (Exhibit Nos. 120 and 121 were marked  
15 for identification and received into  
16 evidence.)

17 MS. ROBESON: All right. Anything else? Okay.  
18 Go ahead, Mr. Harris.

19 DIRECT EXAMINATION

20 BY MR. HARRIS:

21 Q Okay. We're ready, Mr. Iraola. Would you state  
22 your name and business address?

23 A Sure. For the record, I'm Miguel Iraola with Hord  
24 Coplan Macht located at 750 East Pratt Street, Suite 1100,  
25 Baltimore, Maryland 21202.



1 MS. ROBESON: And I'm sorry. Can you pronounce  
2 your name again?

3 THE WITNESS: Iraola.

4 MS. ROBESON: Iraola, okay.

5 THE WITNESS: Yes.

6 MS. ROBESON: Thank you.

7 BY MR. HARRIS:

8 Q Okay. What is your position at HCM?

9 A I'm a principal and the director of planning. I'm  
10 responsible for the design and processing of all planning  
11 assignments for the firm. That includes feasibility  
12 studies, entitlement work including re-zonings, community  
13 master planning and comprehensive planning.

14 Q And how long have you been engaged in the --

15 MR. HARRIS: Oh, actually, we can skip this. This  
16 is all --

17 MS. ROBESON: Qualification.

18 MR. HARRIS: -- qualifications as an expert. I  
19 think --

20 MS. ROBESON: Oh, okay. And you've already said -  
21 - are you qualifying him as an expert in land planning?

22 MR. HARRIS: Yes, ma'am.

23 MS. ROBESON: Okay. Have you ever testified as an  
24 expert?

25 THE WITNESS: I sure have in both Howard County



1 and Montgomery County.

2 MS. ROBESON: Okay. Go ahead. I'll accept him as  
3 an expert in land planning.

4 MR. HARRIS: Okay. Thank you.

5 BY MR. HARRIS:

6 Q Okay. Let's move to --

7 MS. ROBESON: Wait. Wait.

8 BY MR. HARRIS:

9 Q -- your familiarity of the property and --

10 MS. ROBESON: Mr. Harris.

11 MR. HARRIS: Oh, I'm sorry.

12 MS. ROBESON: Your associate is here.

13 MR. HARRIS: Well, I've done something wrong.

14 MS. CB: No, no, no.

15 MR. HARRIS: Oh.

16 MS. CB: I wondered if you wanted to swear him.

17 THE WITNESS: Already did.

18 MR. HARRIS: She did.

19 MS. CB: Oh, she did. I'm sorry.

20 MS. ROBESON: Yes.

21 MR. HARRIS: Okay, yes. Okay.

22 MS. ROBESON: Wait. Court reporter, did I swear  
23 him? Okay.

24 MS. CB: I'm sorry. I'm losing track of  
25 everything myself.



1 MS. ROBESON: No. It needs all of us today.

2 Okay. Go ahead, Mr. Harris.

3 BY MR. HARRIS:

4 Q Okay. Are you familiar with this application and  
5 the corresponding schematic development plan?

6 A Yes. Local Map Amendment G-892 is an application  
7 for re-zoning from the current R-60 Zone to an RT-15 Zone on  
8 the subject property known as Lot 58 of the Evanswood  
9 subdivision located at 711 Pershing Drive in Silver Spring,  
10 Maryland. The 4.85 acre property currently contains the  
11 Chelsea School. The development proposal consists of 77  
12 dwelling units, 76 townhomes and one single-family detached  
13 home. Included in the townhouse portion of the, of the  
14 development program are 10 moderately-priced dwelling units,  
15 or MPDUs. The proposed townhomes will be approximately a  
16 maximum of 35 foot in height with integral rear-loaded  
17 garages.

18 Q And were you employed by the applicant to assist  
19 in land use components of this proceeding and what, in that  
20 respect, did you do?

21 A Yes. My firm was commissioned by the applicant to  
22 provide land planning services including expert testimony at  
23 this proceeding. I have experience in master plan  
24 implementation and regulatory work while a team member for  
25 the Community Based Planning Division Silver Spring/Takoma



1 Park team. I was on the project team for the North and West  
2 Silver Spring Master Plan as well as on the Silver Spring  
3 CBD and Vicinity Master Plan. Specifically, I attended team  
4 meetings, meeting with planning staff, attended community  
5 outreach, prepared analysis drawings and helped to prepare  
6 the land use and zoning report.

7 Q And have you had an opportunity to visit the  
8 property?

9 A Yeah. Several times just to reacquaint myself  
10 with the existing conditions and understand the neighborhood  
11 character and overall context.

12 Q I see our Vanna White has a board up there on the  
13 easel and if you could identify that and then we can have it  
14 labeled as an exhibit.

15 A This exhibit is subject property context.

16 MS. ROBESON: Okay. We are up to 122. Mr. Brown,  
17 do you have an objection?

18 MR. BROWN: No.

19 MS. ROBESON: Okay. We'll admit it as 122.

20 (Exhibit No. 122 was marked for  
21 identification and received into  
22 evidence.)

23 BY MR. HARRIS:

24 Q Okay. Go on. Would you describe what that  
25 Exhibit 122 depicts?



1           A       Sure. The 4.85 acre subject property known as Lot  
2   58 of Evanswood subdivision is located at 711 Pershing Drive  
3   in Silver Spring. The subject property is generally  
4   rectangular in shape and has public street frontages on  
5   three sides including Ellsworth Drive on the east, which  
6   I'll show you right here, Springvale Road to the north,  
7   including Springvale Lane which is a small cul-de-sac that  
8   just accesses off of Springvale Lane, Pershing Drive to the  
9   east. Also, the, along the southern edge of the property is  
10  the, there's some mixed-use special exceptions non-  
11  professional, non-resident professional offices along Cedar  
12  Drive. The entire block is zoned R-60.

13               The subject property contains the Chelsea School,  
14  a special needs school that will be relocating their  
15  facilities elsewhere in order to better serve their  
16  students. There are four main buildings totaling  
17  approximately 40,000 square feet including the historic  
18  Riggs-Thompson house which is right here, what they're  
19  showing as with the red rood.

20               Additionally, there's some parking areas, about 70  
21  spaces shown right here in this corner of the site, access  
22  drives which are shown with these orange, orange arrows.  
23  This is a service access drive off of Springvale, this is a  
24  drive that accesses the parking facilities and then there's  
25  another drive that accesses a driveway leading up to a small



1 parking area here. Additionally, there's another, an access  
2 point that exists here along Pershing Drive.

3 Also along, along Pershing Drive, there is a  
4 sidewalk and it's really the only sidewalk that exists along  
5 the entire perimeter of the site. The site slopes generally  
6 from a high side along Pershing Drive to a low side along  
7 Ellsworth, and there's approximately 42 feet of grade change  
8 across the site. Additionally, there are some trees that  
9 are located kind of in the southwest corner of the site in  
10 this vicinity here.

11 The school operates under a special exception,  
12 Case No. S-2405, approved in 2000 and the opinion date is  
13 October 5th, 2000. Under the special exception approval,  
14 the school could operate with an enrollment of, of a maximum  
15 of 200 students. As a religious school, they could operate  
16 up to 400 students. They, as part of the special exception,  
17 also included an expanded building frontage, particularly  
18 along Springvale Drive here and also, established a  
19 reduction in the, the environmental setting for the Riggs-  
20 Thompson house in order to accommodate future school  
21 building expansion.

22 Q Okay. Would you describe for us the surrounding  
23 area or more specifically, what's usually referred to as the  
24 neighborhood in a zoning case?

25 A Right.



1           Q     And I think we have another exhibit.

2           A     I'd like to introduce, this is the surrounding  
3 area plan.

4           MS. ROBESON:   Okay.   Any --

5           THE WITNESS:   And we have, I believe we have a  
6 number for this in the exhibit list.

7           MS. ROBESON:   Well, if we're going to rely on this  
8 at the hearing, I'd prefer to separately mark it.

9           MR. HARRIS:   Re-number it?   Okay.

10          MS. ROBESON:   Well, once in awhile, people come  
11 and make "Xs@ on it and things like that so if we --

12          MR. HARRIS:   Okay.

13          MS. ROBESON:   If anyone has an objection, I'd like  
14 it as an independent exhibit.   Mr. Brown, do you have an  
15 objection --

16          MR. BROWN:   Is there --

17          MS. ROBESON:   -- to handling it that --

18          MR. BROWN:   Is there another copy of this in the  
19 record?

20          MS. ROBESON:   Yes.

21          THE WITNESS:   Yes.

22          MS. ROBESON:   I think he's saying --

23          MR. HARRIS:   I think so.

24          MS. ROBESON:   -- that there is --

25          MR. HARRIS:   I think it was submitted.



1 MS. ROBESON: Is it in the land planning report?

2 THE WITNESS: Yes.

3 MS. ROBESON: It is in the record in the land  
4 planning report. I'm requesting that it be, this be added  
5 as an independent exhibit solely because we have been  
6 through several hearings where people have made marks.

7 MR. BROWN: I encourage that solution.

8 MS. ROBESON: All right. So I'm just trying to  
9 find -- oh, I found it. It's -- well, I don't see it  
10 immediately --

11 MR. HARRIS: I don't see it either.

12 MS. ROBESON: -- as an attachment so we, do you  
13 have any objections as --

14 MS. SPIELBERG: It's part of the application  
15 package. I think it's Exhibit 13.

16 MR. HARRIS: Well, let's just re-number it here  
17 anyway.

18 MS. ROBESON: Okay.

19 MR. HARRIS: And we'll put an "X@ on it and that  
20 way it will be different anyway.

21 MS. ROBESON: Okay. So this will be Exhibit 123,  
22 please.

23 MR. HARRIS: Okay. So --

24 MS. ROBESON: And what's this called?

25 THE WITNESS: Surrounding area plan.



1 MS. ROBESON: Surrounding area plan.

2 (Exhibit No. 123 was marked for  
3 identification and received into  
4 evidence.)

5 BY MR. HARRIS:

6 Q Okay. Okay, Mr. Iraola, would you describe this  
7 then for us, please?

8 A Sure. In a floating zone application, the  
9 surrounding area is defined as those areas most directly  
10 affected by the proposed development in order to evaluate  
11 compatibility. A useful description of what a surrounding  
12 area plan is was given to, given by Planning Board Chairman  
13 Francoise Carrier at the May 19th Planning Board hearing.  
14 She used a metaphor of a calm pool of water representing the  
15 surrounding area and a pebble representing the subject  
16 property. When a pebble is dropped into the pool, it causes  
17 ripples. The bigger ripples occur closest to the point  
18 where the pebble was dropped and the ripples dissipate as  
19 they radiate from that point. The larger the ripple  
20 represents more effects. The dissipating ripples represent  
21 areas with decreasing effects created by the development  
22 proposal.

23 The surrounding area for the subject property is  
24 defined by four public streets, Dale Drive to the north,  
25 which is the northern boundary right here, Wayne Avenue to



1 the east, Georgia Avenue to the south and Colesville Road to  
2 the west. The surrounding area boundary encompasses  
3 approximately half of the Seven Oaks-Evanswood neighborhood  
4 and a portion of the Silver Spring CBD.

5 The subject property is located within a larger  
6 block defined by Cedar Street to the south, Ellsworth Drive  
7 to the west, Springvale Road to the north and Pershing to  
8 the east. The surrounding area boundary has an area of  
9 approximately 128 acres and it contains approximately 24  
10 square blocks.

11 Q Now, at the Planning Board hearing, one or more  
12 members of the Board suggested some reduction in the  
13 surrounding area as the neighborhood for zoning purposes.  
14 Can you explain what their suggestion was?

15 A That's correct. Chairman Carrier suggested that  
16 the boundary perhaps went too far to the north into the  
17 neighborhood and too far to the south into the CBD, so she  
18 suggested a compression from the, from the north and the  
19 south of the surrounding area boundary.

20 Q And would you approximate where that -- I don't  
21 think she said --

22 A No. She --

23 Q -- anything in particular.

24 A She was not specific with regards to that. A  
25 logical place to break it would be at Fenton Street. This



1 is the CBD border essentially right at Cedar Street.

2 MS. ROBESON: Okay.

3 THE WITNESS: Fenton Street would be here, would  
4 be a logical place to break it as well. Also --

5 MS. ROBESON: Is Fenton labeled on that exhibit?

6 THE WITNESS: Yes. Fenton is --

7 MS. ROBESON: For the record.

8 THE WITNESS: Fenton is labeled on this exhibit.

9 MS. ROBESON: Okay. And Cedar Street is too?

10 THE WITNESS: It absolutely is.

11 MS. ROBESON: Okay.

12 THE WITNESS: And so is the CBD boundary.

13 MS. ROBESON: Okay. That's fine.

14 THE WITNESS: For the record. As you can see, the  
15 subject property is still, it's located within the context  
16 of the red line as well but then if you go north, northbound  
17 into the Seven Oaks neighborhood, I mean, Woodside Parkway  
18 seems to be a logical break also and it would connect back  
19 to Dale Drive or it could come back, connect on Dartmouth.  
20 I did hear testimony from folks this morning that they lived  
21 on Greenbrier Drive which kind of makes sense as well. I  
22 would suggest if we were to reduce the surrounding boundary,  
23 area boundary is to use Woodside Parkway as somewhat of a  
24 dividing point. It's still -- the boundary to the north and  
25 to the south as revised still centrally locates the subject



1 property within the context of that new revised boundary.

2 BY MR. HARRIS:

3 Q And what is --

4 MS. ROBESON: What about the -- oh, I'm sorry.

5 MR. HARRIS: Go ahead. No.

6 MS. ROBESON: What about the southern boundary?

7 THE WITNESS: The southern boundary would just be  
8 at Fenton Street.

9 MS. ROBESON: Fenton, okay.

10 THE WITNESS: Fenton Street.

11 BY MR. HARRIS:

12 Q And was it your understanding at the Planning  
13 Board meeting that the, were the surrounding area redrawn,  
14 that it would still include some portion of the CBD?

15 A Absolutely. Again, using the pebble analogy and  
16 metaphor, it's still within the influence of the subject  
17 property.

18 Q Okay. So would you then go ahead and I think we  
19 have a certified zoning map that we wanted to introduce as  
20 well.

21 A Right.

22 MS. ROBESON: Now, that probably already is in the  
23 record.

24 THE WITNESS: Right.

25 MS. ROBESON: Well, we'll -- let me just, I think



1 it might be faster just to mark this --

2 MR. HARRIS: Okay.

3 MS. ROBESON: -- as 124. 120 --

4 MR. HARRIS: 124.

5 MS. ROBESON: I have 14.

6 MR. HARRIS: Yes. No, she's saying the other one  
7 is Exhibit 5 in the record.

8 MS. ROBESON: Oh, okay. I'm sorry. 124,  
9 certified zoning map.

10 MR. HARRIS: Okay. Yes. 124.

11 (Exhibit No. 124 was marked for  
12 identification.)

13 BY MR. HARRIS:

14 Q Okay. So if you would, describe the character and  
15 the zoning of the surrounding area.

16 A Sure. Just for clarification, the certified  
17 zoning map has just been pieced together. It's actually,  
18 the property is located on two maps so they've been  
19 superimposed in this exhibit for clarity's sake.

20 MS. ROBESON: Okay.

21 THE WITNESS: Could you flip it to the surrounding  
22 area real quick? I'll refer to the Exhibit 123, the  
23 surrounding area. That's fine. Okay. The subject property  
24 is centrally located within the surrounding area boundary.  
25 The surrounding area represents a diverse cross-section of



1 land, of land uses transitioning from the Silver Spring CBD  
2 urban core near Metro to the lower density residential  
3 neighborhoods to the north. The block in which the subject  
4 property is located is in a transitional area where the  
5 residential neighborhood essentially meets the CBD.

6 The CBD has a diverse mix of uses including high-  
7 rise residential, institutional, office, retail,  
8 entertainment and civic. Within a five minute walking  
9 distance of the subject property is the Whole Foods grocery  
10 stores and movie theater, grocery stores which would be  
11 located on, it's located right here.

12 MS. ROBESON: Okay. The record --

13 THE WITNESS: I'm sorry.

14 MS. ROBESON: -- doesn't understand here so --

15 THE WITNESS: Okay. It's -- okay. It's located -  
16 -

17 MS. ROBESON: If you want to mark it or you can  
18 describe it. One of the two.

19 THE WITNESS: I can. Actually, it's actually  
20 labeled downtown Silver Spring right on Fenton Street.

21 MS. ROB Just north of Fenton Street --

22 THE WITNESS: North.

23 MS. ROBESON: -- on the parcel labeled downtown  
24 Silver Spring.

25 THE WITNESS: Down Silver Spring. That's correct.



1 MS. ROBESON: Okay. On Exhibit 123.

2 THE WITNESS: That's correct.

3 MS. ROBESON: All right. Go ahead.

4 THE WITNESS: There are some movie theaters as  
5 well which are located on Ellsworth Drive on the, right at  
6 the corner of Fenton, on the southeast corner of Ellsworth  
7 Drive and Fenton. There's the City Place Mall which is  
8 essentially located right here on Fenton, at Fenton and  
9 Ellsworth between Colesville Road and Ellsworth, and a  
10 variety of other restaurants associated with that. There's  
11 also the new civic building which is located right here on  
12 the corner of, northeast corner of Ellsworth and Fenton  
13 Street. In addition to the civic building, on the same  
14 property is essentially Veterans Plaza as well.

15 Generally, the CBD is organized with the most  
16 intensive uses including CBD zoning located at the core near  
17 Metro. I'd also like to introduce one other, one other  
18 exhibit or actually, go back to the one that we had with Mr.  
19 Youngentob. It's labeled neighborhood context aerial.  
20 Perhaps this will be a little clearer.

21 BY MR. HARRIS:

22 Q 112G.

23 A This is directly, a lot of the same uses that I  
24 just mentioned previously are directly labeled actually on  
25 this one for --



1 MS. ROBESON: Okay.

2 THE WITNESS: -- precise clarity.

3 MS. ROBESON: On the 112G. Okay.

4 THE WITNESS: Precise clarity.

5 BY MR. HARRIS:

6 Q 112G.

7 A 112G.

8 MS. ROBESON: Yes.

9 THE WITNESS: It's essentially near Metro where  
10 there's certainly CBD zoning. It transitions in terms of  
11 density and height from the core to the edges along a CBD  
12 which are typically zoned CBD 0.5 or the lowest intensity  
13 CBD zoning, and that's really typical of all CBDs whether  
14 they're, it's Wheaton or Bethesda. There's a tent effect  
15 where the highest density and intensity of uses are located  
16 at the core near Metro and it tapers down as you reach the  
17 edges. So this progression, essentially, from small, from  
18 taller and denser to lower and less dense is not a perfect  
19 one since there are lower and less dense developments near  
20 Metro as well as denser developments located at the edges.

21 The Seven Oaks-Evanswood neighborhood is  
22 predominantly one-family detached homes two to three stories  
23 in height and mostly built in the 1930s. Within the Seven  
24 Oaks portion, the land uses are very diverse including high-  
25 rise apartments within the planning area, and I'll point one



1 out, which is Colesville Towers.

2 MS. ROBESON: Which is labeled on 112G.

3 THE WITNESS: On -- that's correct. On the corner  
4 of Colesville Road and Cedar. There's also senior housing  
5 has been pointed out which is at Springvale Terrace which is  
6 located on Springvale Road and essentially, Wayne Avenue.  
7 There's also a professional office located along, along  
8 Cedar. There's also a small office component that is  
9 located on the corner of Colesville Road and Cedar. There  
10 are civic uses such as the library that's immediately across  
11 the street from there. There's also public parkland within  
12 the boundary, Ellsworth Urban Park. There's some dispute  
13 whether it's called urban or not. It's a designation that  
14 Park and Planning does give to some of the parks whether  
15 they're local parks or urban parks. I believe that this one  
16 is designated as an urban park. There's also commercial  
17 zoning in the expanded, along Dale Drive, commercial parking  
18 for a restaurant as well.

19 Additionally, the street pattern I think can be  
20 described as a modified gridded network. It's not a total  
21 gridded network but it is, it has considerable connectivity.  
22 Within the Seven Oaks neighborhood, there are access  
23 restrictions and they've been in place for a number of years  
24 by the County on some of the streets within, within the  
25 Seven Oaks neighborhood. That is, they were primarily put



1 in place due to cut-through traffic into the neighborhood.

2           Since the Seven Oaks-Evanswood neighborhood is an  
3 old or established neighborhood, there are mature trees  
4 along many of the streets as well. Many of the streets have  
5 no sidewalks. The existing one-family detached homes  
6 average approximately 1600 square feet in floor area. The  
7 architectural styles can be described as generally  
8 traditional. However, many of these homes have been  
9 architecturally modified over the years as you can imagine.

10 The majority of the Seven Oaks-Evanswood neighborhood is  
11 zoned, zoned R-60.

12           I'd like to now just kind of go around pictorially  
13 and show you --

14           BY MR. HARRIS:

15           Q     Before you do that, while Exhibit 112G is up  
16 there, can you identify any other townhome developments that  
17 are on the outside of the CBD along the edge of single-  
18 family residential areas?

19           A     Right. I'd like to point out on also Exhibit  
20 112G, right where it's labeled MNCPPC, this is the  
21 headquarters for Park and Planning, immediately across the  
22 street from that is, are townhomes and that is actually  
23 within I believe the Woodside neighborhood. It's still  
24 within the master plan area, this master plan, but it's  
25 across the street from Park and Planning. There are



1 townhomes and they have existed there for a number of  
2 different years.

3           Also, if you just go off, immediately off the, off  
4 this map and along Georgia Avenue going in a northbound  
5 direction, it's the Woodside Courts which is the subject of  
6 a, of this, the RT re-zoning that a lot of people have been  
7 making reference to along Georgia Avenue. That's  
8 immediately off this, off this page just to put it into  
9 context.

10           Q     How about Fairview Drive or Lane, do you know  
11 where that is and the townhouses there?

12           A     I'm not familiar with where Fairview is.

13           Q     Okay. All right. Well, go ahead. You were going  
14 to, you had a photo board I think.

15           A     Right. I'd like to introduce this. It's subject  
16 property-Springvale photos.

17                   MS. ROBESON: Okay. That would be 125. Mr.  
18 Brown, do you have an objection?

19                   MR. BROWN: No objection.

20                               (Exhibit No. 125 was marked for  
21 identification and received into  
22 evidence.)

23                   THE WITNESS: I do have reductions of these if it  
24 would help you.

25                   MS. ROBESON: I can --



1 THE WITNESS: Are you okay then?

2 MS. ROBESON: Yes.

3 THE WITNESS: Okay.

4 MS. ROBESON: I can see.

5 THE WITNESS: All right.

6 MR. BROWN: Well, I would like a copy certainly of  
7 all of them.

8 THE WITNESS: Well, when I introduce them.

9 MR. HARRIS: Yes.

10 MS. ROBESON: That's fine.

11 THE WITNESS: All right. Okay. Confronting the  
12 property on the north is Springvale Drive or Road and  
13 Springvale Lane which again, is that kind of cul-de-sac that  
14 I had mentioned. There are approximately 13 one-family  
15 detached home sites, nine on Springvale Road and four on  
16 Springvale Lane. And just to show you, they would be along  
17 that side of the property line and you can see Springvale.

18 MS. ROBESON: The north side.

19 THE WITNESS: The north side of Springvale,  
20 Springvale Road. There is a cul-de-sac, this Springvale  
21 Lane that acts as a, again, on the north side of Springvale  
22 Road. These homes are all zoned R-60, approximately two-  
23 and-a-half stories in height, many with walkout basements  
24 which is shown kind of on this image here. Two stories here  
25 and then it walks out to the, to the rear.



1           Also on this, on this image, you can kind of see  
2   the fact that there really aren't any sidewalks on this, on  
3   this street. They're open section roadways. They're not  
4   really streets. And you can kind of see the edge of the  
5   Chelsea School which is on our arrowhead here where it says  
6   road, or I'm sorry, where it says Springvale looking back  
7   into the property. It's kind of like this image right here.

8   This image right here which is labeled property along  
9   Springvale Road kind of gives you a window into what the  
10  property looks like from that perspective. As you can see,  
11  in the background is the Colesville Towers high-rise  
12  apartments on the corner of Cedar and Colesville Road.

13           All right. I have a series of four of these  
14  around the perimeter so we can either, but I'd like to  
15  introduce another one.

16           MS. ROBESON: Okay. 120, Exhibit 126. Why don't  
17  you describe just briefly what it is and I'll see if Mr.  
18  Brown objects.

19                           (Exhibit No. 126 was marked for  
20                   identification.)

21           THE WITNESS: The name of the exhibit is subject  
22  property-Pershing photos.

23           MS. ROBESON: Okay. Mr. Brown, do you have an  
24  objection?

25           MR. BROWN: No.



1 MS. ROBESON: Okay. We will admit it as 126.

2 (Exhibit No. 126 was received into  
3 evidence.)

4 THE WITNESS: To the northeast, essentially along  
5 Springvale Road at Pershing, is the 156 unit Springvale  
6 Terrace senior apartments and this is the photo here that's  
7 labeled Springvale Terrace senior housing taken from the  
8 corner of Pershing and Springvale looking to the east. It  
9 is zoned R-60 and operates under a special exception use.  
10 Confronting the project, the subject property to the east  
11 along Pershing are five one-family detached homes, which  
12 would be along here, of which one of them operates as a  
13 special exception which I believe is this one. This corner  
14 lot right down here.

15 MS. ROBESON: Closest to Cedar Lane?

16 THE WITNESS: Right. Two homes off of Pershing,  
17 off of Cedar Lane to the north. And then this is a typical  
18 home looking back on the east side of Pershing.

19 MS. ROBESON: Okay. Just north of Cedar Lane.

20 THE WITNESS: That's correct.

21 MS. ROBESON: Right. Okay.

22 THE WITNESS: This is subject property-Cedar  
23 photos.

24 MS. ROBESON: Okay. That's 127. Mr. Brown, do  
25 you have an objection?



1 MR. BROWN: No objection.

2 MS. ROBESON: All right.

3 THE WITNESS: Okay.

4 MS. ROBESON: They're admitted as 127.

5 (Exhibit No. 127 was marked for  
6 identification and received into  
7 evidence.)

8 THE WITNESS: All right. Adjacent and located on  
9 the same block as the subject property to the south are 19,  
10 I'm sorry, nine one-family detached homes zoned R-60.  
11 Approximately seven of these nine properties have absentee  
12 owners and/or operate as non-resident professional offices  
13 recommended in the master plan for special exception uses.  
14 Some of these existing businesses include doctor's offices  
15 and attorney's offices.

16 MS. ROBESON: Okay. I'm sorry. Are those the  
17 blue arrows?

18 THE WITNESS: The blue arrows are the view and  
19 I'll walk --

20 MS. ROBESON: Oh, I'm sorry. Okay.

21 THE WITNESS: I will walk you through those.

22 MS. ROBESON: Thank you.

23 THE WITNESS: Um-hum. This image right here is  
24 the Cedar Street character which is essentially this vantage  
25 point looking from Cedar back, I guess, to the north along



1 Cedar. There's an image referred to as Cedar at Ellsworth  
2 which is right at the corner of Cedar and Ellsworth looking  
3 kind of in a northeasterly or northwesterly vantage point  
4 and what you can see here is the Colesville Towers high-rise  
5 apartments. Also, kind of a more direct view of one of the  
6 special exception uses here along Cedar is this non, the  
7 image that's labeled non-resident professional office here  
8 essentially houses a law firm right there. Just for the  
9 record, I did take all of these images myself.

10 All right. And the final one.

11 MS. ROBESON: This would be 128 which is subject  
12 property-Ellsworth photos. Mr. Brown, do you have an  
13 objection to this?

14 MR. BROWN: No objection.

15 MS. ROBESON: All right. They'll be admitted as  
16 128.

17 (Exhibit No. 128 was marked for  
18 identification and received into  
19 evidence.)

20 THE WITNESS: Confronting the subject property to  
21 the west along Ellsworth Drive is a small triangular-shaped  
22 piece of parkland that's zoned R-60 which on this image, you  
23 can kind of, probably can't see it on this image but I'll  
24 point it out to you anyway. It is the small triangular  
25 piece of ground that is at the intersection of Cedar and



1 Ellsworth in the northwest quadrant. You can see it's a  
2 triangular-shaped piece of ground with trees on it in plan  
3 view.

4 MS. ROBESON: Yes.

5 THE WITNESS: But just beyond that is the 275 unit  
6 Colesville Towers which here's another image of it. It's,  
7 I'm referring to Colesville Towers and Silver Spring Library  
8 which is, the vantage point here is midway on the block  
9 looking back in kind of a southwesterly direction. It is,  
10 that, the high-rise apartment building, and it has an  
11 attached office component which is just, would be shown just  
12 off this image along there --

13 MS. ROBESON: To the east.

14 THE WITNESS: To the east. To the west, I'm  
15 sorry. To the west.

16 MS. ROBESON: Oh, yes. You're right.

17 THE WITNESS: To the west. And that whole  
18 property, the Colesville Towers high-rise and the office  
19 component, is zoned CO, commercial office. The Silver  
20 Spring Library is zoned R-60 which you can see the image  
21 here on the Colesville Towers and Silver Spring Library  
22 image. And also, just north of that is Ellsworth Urban Park  
23 which is, here's an image of what that looks like, and this  
24 is kind of looking in the north, northwesterly direction.  
25 Surprisingly, the Ellsworth Urban Park is kind of split-



1     zoned.   It's zoned RT-12.5 as well as R-60.

2                 BY MR. HARRIS:

3             Q     Okay.  Could you please review for us the proposed  
4     schematic development plan?

5             A     Sure.

6                 MS. ROBESON:  Is this in the record already?

7                 MR. HARRIS:  I do not believe it is.

8                 THE WITNESS:  Yes, it is.

9                 MR. HARRIS:  Oh, is it?  Okay.

10                THE WITNESS:  Yes.  It's in the record.

11                MR. HARRIS:  I'm getting lots of nods.

12                MS. ROBESON:  Well, okay.  Can you provide the  
13     exhibit number and, Mr. Brown, it's in the record but this  
14     is your time to object.  Do you have any --

15                MR. BROWN:  The Devil is in the details.  I'm  
16     looking.  This looks like the one dated 4/12/11.  That's  
17     Exhibit 30A.  Can you confirm that?

18                MR. HARRIS:  Schematic development -- I believe  
19     that is correct.

20                MS. ROBESON:  Okay.  Can you --

21                MR. BROWN:  Let's go.

22                MS. ROBESON:  Can you mark that as Exhibit 30A and  
23     then put duplicate on it because I don't think we'll be  
24     marking this one up.

25                BY MR. HARRIS:



1           Q     Okay. And go ahead, if you would, describe that  
2     schematic development plan.

3           A     Sure. Just for perfect clarity, I want to just  
4     call out that there is, the latest revision date is revision  
5     2 dated April 12th, 2011 titled Revised to Address  
6     Development Services and Park and Planning Comments.

7           MS. ROBESON: Okay. Well, wait a minute. Is this  
8     the exact same thing as 30A?

9           THE WITNESS: Just check the revision date.

10          MR. HARRIS: Yes. April 12th, yes.

11          MS. ROBESON: Okay.

12          MR. HARRIS: So we're fine.

13          THE WITNESS: Okay. When an RT-15 application is  
14     filed for an optional method of development in accordance  
15     with Section 59-H-2.5 of the Zoning Ordinance, a schematic  
16     development plan is required to show the general  
17     organization of the proposed development including building  
18     placement, access points and circulation. The schematic  
19     development plan before you illustrates how the proposed  
20     residential community is conceptually designed. This  
21     schematic development plan was revised on initial comments  
22     made by the residents during the community outreach  
23     meetings.

24                 The plan reflects a site area of 4.85 acres, a  
25     gross tract area of 5.25 acres which is the area of the site



1 4.84 acres plus 0.4 acres of previously dedicated right-of-  
2 way along Springvale and Pershing. It shows 77 dwelling  
3 units consisting of 76 townhomes plus one single-family  
4 detached home site. The proposed density is 14.67 dwelling  
5 units per acre and the proposal includes 10 moderately-  
6 priced dwelling units representing 12-and-a-half percent of  
7 the total unit count.

8           The plan is organized along a new private street  
9 that bisects the sites and provides access to the townhomes.  
10 Rear alleys that access, rear alleys that access garages  
11 will connect to that private street, and I'll describe it.  
12 The private street is labeled Private Street A and the  
13 alleys are the grade connectors that create small  
14 intersections, actually, right here but they are, they  
15 access alleys to this grouping of townhomes for example.  
16 There are six, there are six alleys that access off of this  
17 private street.

18           The individual rows of townhomes are oriented  
19 perpendicular to and set back from Springvale Road.  
20 Sidewalks will be provided along all the new, the new  
21 private street as well as improvements to existing streets  
22 such as sidewalks, lighting, curbs and gutter that really  
23 don't exist right now with the exception, I should mention,  
24 of Pershing Drive where they do exist. There is sidewalk  
25 that currently exists along that frontage.



1           These improvements will provide additional  
2 pedestrian amenities and connectivity for the development  
3 and benefits the existing neighborhood as well. Really,  
4 should the configuration of the private street would, if it  
5 would change, it really doesn't change the access to the, to  
6 the rear access to the alleys and conversely, the garages to  
7 the rear as well.

8           Recognizing that there are existing homes along  
9 Springvale Road, the ends of each row or townhomes will be  
10 designed architecturally with a front facade to complement  
11 the existing homes on the opposite side of Springvale and  
12 I'm referring to the six "Ns@ along Springvale, along the  
13 subject property that face onto Springvale. Townhomes are  
14 appropriate certainly as a building, as a building type  
15 since they do absorb the grade nicely on a sloping site and  
16 also, can provide additional open space.

17           All of the new building fronts on this development  
18 will orient to either streets or to open space, and I'll  
19 just kind of walk you around that. These two rows of  
20 townhomes orient to both the street and open space. These  
21 ends would also against an open space or to a street, the  
22 same with these edges as well. Internally, these are  
23 courtyard spaces on the, these are two fronts that face each  
24 other and they are landscaped courtyards so these fronts  
25 actually orient onto open space as well.



1           But there are two primary open space amenities  
2   with significant street frontage anchoring each end of the  
3   site as I just kind of described here on the corner of  
4   Ellsworth Drive and one on the corner of, certainly on  
5   Pershing. The open space amenities will serves as pocket  
6   parks and include landscaping, seating, pathways and such.  
7   These two spaces are linked by a linear open space which is  
8   really kind of along this, the north side of the ends of  
9   townhomes that face onto Springvale. These three spaces are  
10  intended to be freely accessible to the public.

11           The remainder of the required green area is semi-  
12  private in nature. The semi-private spaces includes the  
13  areas along the southern edge of the property, which would  
14  be right here, as well as the four courtyard spaces between  
15  the rows of townhomes. In all, the total green area that's  
16  proposed is approximately 2.4 acres or 45 percent of the  
17  gross tract area.

18           The proposed setbacks from a public street right-  
19  of-way range from approximately 22 feet along Ellsworth, and  
20  that's really the smallest point right here, approximately  
21  25 feet along Springvale Road right there and approximately  
22  62 feet, and these are the minimum setbacks that are being  
23  proposed, obviously, it's a lot deeper as it gets splayed  
24  out, is about 62 feet there. And the setbacks from the lots  
25  on the south is approximately 20 feet.



1           MR. HARRIS: Let me have an exhibit marked here.  
2 Can we have this memorandum marked as an exhibit, please?  
3 Thank you.

4           MS. ROBESON: Okay. This will be 129 which is a  
5 memo from, a memo to Kathy Conlon dated March 21st, 2011.

6           BY MR. HARRIS:

7           Q     Mr. Iraola, there's been.

8           MS. ROBESON: Wait one second.

9           MR. HARRIS: Oh, okay.

10          MS. ROBESON: Mr. Brown, do you have --

11          MR. BROWN: No objection.

12                         (Exhibit No. 129 was marked for  
13 identification and received into  
14 evidence.)

15          MS. ROBESON: Okay. Go ahead, Mr. Harris.

16          BY MR. HARRIS:

17          Q     Mr. Iraola, there's been some discussion about the  
18 private access road and its relationship to the Riggs-  
19 Thompson house. Can you explain what the issue is and what  
20 this memorandum says in that regard?

21          A     Sure. This memorandum to Ms. Conlon is from the  
22 Historic Preservation staff at Park and Planning given at  
23 the DRC which is the Development Review Committee. It's a  
24 meeting where all the agencies get together and give  
25 preliminary comments with regard to this. At that time, Mr.



1 Silver acknowledges that the applicant did meet with  
2 Historic Preservation staff to discuss the proposal.

3 At this time, he really, that they do recommend an  
4 alternative alignment for Private Street A, which is the  
5 street that bisects the site, and to provide additional  
6 buffer between the historic street and, the historic  
7 resource and the street. They did not, they did not really  
8 oppose any of the, the fact that there would be a street  
9 here, it's just how it gets configured.

10 MS. ROBESON: Okay.

11 BY MR. HARRIS:

12 Q So are you saying that that memo implies that it  
13 would be okay to have an access road through the  
14 environmental setting?

15 A That's correct and, you know, just to reference  
16 the special exception for the Chelsea School at the time,  
17 there was always a street that kind of accessed it. It's  
18 just the question of where it gets oriented, whether it's in  
19 the front or the backside of the house.

20 MS. ROBESON: Can you show what the environmental  
21 setting is for the Thompson house?

22 THE WITNESS: Approximately?

23 MS. ROBESON: Yes.

24 THE WITNESS: Approximately. It's approximately  
25 that portion right here.



1 MS. ROBESON: Okay. And that is, when you say  
2 that --

3 THE WITNESS: I'm sorry. I'm sorry.

4 MS. ROBESON: That is the --

5 THE WITNESS: It is the --

6 MS. ROBESON: -- open space.

7 THE WITNESS: Right. I will describe it in a  
8 little more detail.

9 MS. ROBESON: Okay. Thanks.

10 THE WITNESS: It's, it would be along Pershing  
11 Drive on the, along the entire edge essentially. It would  
12 go westerly along Springvale Road up until the face of the,  
13 of this row of townhomes that orient directly onto Pershing  
14 southbound across the private street, essentially to the  
15 other face of the row of homes that face onto the Riggs-  
16 Thompson home.

17 MS. ROBESON: Okay. Thank you.

18 BY MR. HARRIS:

19 Q And can you explain where the approved driveway  
20 for, where the existing driveway is, number one, and  
21 secondly, where the approved driveway for the Chelsea  
22 special exception is?

23 A For the Chelsea special exception, it would access  
24 approximately where there's an existing curb cut here along  
25 Pershing Drive immediately south of the home. The drive



1 kind of went in a westerly direction along the edge of the  
2 property and connected to a parking area generally in the,  
3 on the, it would access in kind of a crescent-shaped  
4 configuration with two access points off of Ellsworth.

5 Q And was that driveway cutting through the historic  
6 setting?

7 A Yes, it was.

8 Q The environmental setting?

9 A Yes, it was.

10 Q Okay. I interrupted you. I think you were going  
11 to walk through the schematic development plan. Well, no.  
12 You've already done that I guess.

13 A The zoning.

14 Q The zoning conformance, yes, please. Are you  
15 familiar with Montgomery County Zoning Ordinance and the  
16 provisions of the RT-15 Zone?

17 A Yes, I am.

18 Q Okay. And would you, did you evaluate this  
19 application with respect to the intent and purposes of that  
20 zone and how it relates, how the application relates to the  
21 zone?

22 A Yes. The intent and purpose of the RT zone, as  
23 outlined in Section 59-C-1.721 is to provide suitable sites  
24 for townhouses. The purpose clause requires only one of  
25 three possible locational requirements to be met for



1 approval. It is in my opinion that Chelsea Court meets two  
2 of these three criteria or requirements.

3           The requirement to determine suitable sites for  
4 townhouses are described as follows. Quote, "A, in sections  
5 of the County that are designated or appropriate for  
6 residential development at densities allowed in the RT zones  
7 or in locations in the County where there is a need for  
8 buffer or transition between commercial, industrial or high-  
9 density apartment uses and low-density one-family uses.@  
10 The first criterion designated is addressed as follows. The  
11 master plan is silent with regards to a specific RT zoning  
12 designation for the Chelsea School property in the North and  
13 West Silver Spring Master Plan. However, the townhouse use  
14 is in general conformance with the master plan which will be  
15 further elaborated when I discuss master plan conformance.

16           The second criteria is appropriate and it's  
17 addressed through, appropriateness is really addressed  
18 through a particular site's location as well as the  
19 appropriate density and compatibility. The subject property  
20 is in an area of the County that is appropriate for  
21 residential development at the RT-15 density requested.  
22 Townhouses are a use which is more compatible with the  
23 surrounding Seven Oaks-Evanswood neighborhood than the  
24 existing institutional use.

25           The development of the site with townhomes will



1 preserve and enhance the predominantly residential character  
2 of the area while at the same time, providing housing  
3 diversity and choice. It's also located in a convenient  
4 location for residents to live near or around the Silver  
5 Spring CBD.

6           The site is also appropriate for moderate density  
7 residential like townhomes due to its proximity to Metro.  
8 It's approximately a 10 minute walking distance. Ten minute  
9 walking distance is kind of a normal catchment area for  
10 transit. It varies at times but it's been defined in a lot  
11 of different places. Ten minutes is approximately a half  
12 mile or about 2600 feet.

13           It's also near neighborhood-serving retails within  
14 the CBD, employment access and opportunities as well as  
15 recreational facilities. The residents of this new  
16 community will be able to walk to all of these amenities  
17 shared by the community at large. The ability to walk to  
18 all these basic needs reduces automobile trips and the  
19 dependency on cars. Townhome development at Chelsea Court  
20 will also provide new publicly accessible open space areas  
21 that will be established on the subject property with this  
22 re-zoning. The RT-Zone is appropriate because with the  
23 flexibility in the proposed design and layout, it provides  
24 open spaces, amenities normally not associated with by-right  
25 R-60 zoning.



1           The property is in an appropriate location for  
2 higher density residential given its location in an area  
3 with a variety of neighborhood uses including high-rise  
4 multi-family, senior housing, public parks, non-resident  
5 professional office and moderate density residential. Also,  
6 the property's proximity to the CBD, Metro and the future  
7 purple line station make it an attractive location.

8           The property is identified as an institutional use  
9 and institutional sites are frequently found appropriately,  
10 appropriate -- I'm sorry. The property is identified as an  
11 institutional use and institutional sites are frequently  
12 found appropriate, approved and used for RT zoning. I'd  
13 like to quote three cases that make that same finding, the  
14 Good Counsel site, which is an RT zoning, G-798, the  
15 Christian Life Academy, which is G-739, and Oxbridge which  
16 is G-822.

17           Chelsea Court is appropriately located where it  
18 can utilize the substantial public investment made for the  
19 revitalization of downtown Silver Spring. Over the last 10  
20 year, substantial Federal, State, County and private  
21 investment in infrastructure, transit and community programs  
22 have made Silver Spring nationally recognized. Chelsea  
23 Court, at the appropriate density of 14.67 units per acre  
24 enhances this investment by increasing pedestrian activity  
25 to support this revitalization.



1           The site is located within a half mile of the  
2 Metro station and less than a quarter mile from a Whole  
3 Foods market, Strosniders Hardware, entertainment,  
4 restaurants and other retail services.

5           I should mention that during the Planning Board  
6 hearing, Damon Orobona (phonetic sp.), the reviewer, kind of  
7 mentioned the walk score criteria that he looked at. In  
8 fact, I checked it as well. But this location at 711  
9 Pershing earned a walk score of 89 as defined as very  
10 walkable by walkscore.com. Walkscore.com is, although it's  
11 not scientific, it kind of gives you a measure of  
12 comparability between what is a walkable place and what is  
13 not. A bunch of different factors go into it, access to  
14 transit, complete streets, land uses and so on and so forth,  
15 so this project earned a walk score of 89. And just to give  
16 you a sense of comparison, 100 Maryland Avenue, this  
17 building, scored an 80 so it, by comparison, it would be a  
18 little bit more walkable.

19           The third suitability criteria speaks to the need  
20 for a buffer or a transitional use and it's described as  
21 follows. Again, I'll quote this. "B, in locations in the  
22 County where there is a need for buffer or transition uses  
23 between commercial, industrial or high-density apartment  
24 uses and low-density one-family uses.@

25           The block defined by Cedar, Ellsworth, Springvale



1 and Pershing serves as a transitional block containing the  
2 non-resident professional offices along Cedar and the  
3 current Chelsea School site. The master plan defines  
4 townhomes special exceptions in R-60 clusters as kind of  
5 appropriate strategies or tools to transition land uses near  
6 established residential neighborhoods. That's a general,  
7 general recommendation.

8           By creating front building facades at the ends of  
9 the rows along Springvale Road, the subject property will  
10 act as a buffer and transitional use for the residential  
11 area to the north of Springvale and east of Pershing. The  
12 proposed development will transition density with respect to  
13 the higher intensity uses to the west and to the south  
14 including Colesville Towers high-rise, the downtown Silver  
15 Spring residential component and the high-rise at 710 Roeder  
16 Street. New townhouses will buffer the commercial  
17 businesses along Cedar Street and the CBD as well.  
18 Springvale Terrace to the east is also located within  
19 proximity.

20           As redeveloped, the proposed development will  
21 reinforce the residential character of the area by  
22 establishing an appropriate residential use on this  
23 transitional block. The lots along Cedar Street adjacent to  
24 the southern property boundary of the subject property and  
25 recommended for non-resident professional offices will



1   confront the residential phase of the downtown Silver Spring  
2   project, and I will point where that is. This is Exhibit  
3   128 and I'll look at the map kind of in the upper corner.  
4   As you can see, the downtown Silver Spring project is along  
5   the south side of Cedar in what is shown as a vacant parking  
6   lot. The proposed townhouses will serve as an appropriate  
7   buffer or transitional use from these commercial areas to  
8   the single-family residential areas to the north.

9           The proposed development on the property will  
10   create a cohesive, attractive and pedestrian-friendly  
11   streetscape for the community. The proposed development  
12   will contain units fronting onto existing streets which will  
13   reinforce the rhythm and scale appropriate for this location  
14   immediately outside the CBD. The proposed development will  
15   provide an additional internal street and pedestrian  
16   circulation systems connecting the existing neighborhood to  
17   the CBD. This street framework will also provide new fabric  
18   and integrate within the established neighborhood. Chelsea  
19   Court will be a pedestrian-friendly street as well as  
20   enhancing walking opportunities and linkages to the Metro,  
21   community-serving retail and other civic uses such as parks  
22   and libraries.

23           In my professional opinion, the proposed re-zoning  
24   meets the second criteria, appropriateness, and the third  
25   criteria, transitional in that this is in an area in the



1 Count where townhouse development is appropriate and this  
2 project provides the transition from the higher density CBD,  
3 both residential and commercial uses, to the lower density  
4 one-family uses to the north.

5 Q Does the plan take into account compatibility and  
6 if so, how?

7 A I would like to introduce this exhibit, density  
8 comparison.

9 MS. ROBESON: Okay. We're up to 130. Density  
10 comparison. Any objections, Mr. Brown? Yes, ma'am?

11 MS. VOLK: Actually, I wonder if I can object  
12 because with the density comparison, it takes into account  
13 one building, which is the Springvale Terrace nursing home,  
14 and that actually, I kind of feel that kind of skews the  
15 numbers a bit because it's a nursing home --

16 MS. ROBESON: Okay.

17 MS. VOLK: -- as opposed to building units.

18 MS. ROBESON: I think that is more properly a  
19 question for cross-examination. Do you have any reason to  
20 believe this photo is inaccurate?

21 MS. VOLK: Not at this time.

22 MS. ROBESON: Okay. So if you want to reserve  
23 that question for cross-examination, we can take it up then.  
24 Mr. Brown, do you have any objections to this?

25 MR. BROWN: I don't think anything outside of the



1 surrounding neighborhood that either Mr. Iraola or the  
2 Planning Board has modified regarded as appropriate should  
3 be on here and I'm referring specifically to--

4 MS. ROBESON: Okay. I'm not following you.

5 MR. BROWN: I'm specifically referring to Cole  
6 Spring Plaza on the other side of Colesville Road which is  
7 listed at 257 dwelling --

8 MS. ROBESON: Oh, I see.

9 MR. BROWN: -- units per acre.

10 MS. ROBESON: I see what you're saying.

11 MR. BROWN: So if you just put a nice red "X@  
12 through the middle of that, that would be fine.

13 MS. ROBESON: Well, how about this, Mr. Iraola?

14 THE WITNESS: Iraola.

15 MS. ROBESON: Iraola. I apologize.

16 THE WITNESS: That's all right.

17 MS. ROBESON: Why don't you describe, or if you  
18 could even delineate the boundaries of the neighborhood on  
19 this exhibit.

20 THE WITNESS: Sure. It's a partial. It's not the  
21 whole --

22 MS. ROBESON: Yes.

23 THE WITNESS: -- the whole neighborhood. I just  
24 want --

25 MS. ROBESON: Where they appear.



1           THE WITNESS:   Okay.   The boundary would be along  
2   the entire length, within this image of Colesville Road and  
3   within the confines of Wayne Avenue to the, to the --

4           MS. ROBESON:   To the southeast.

5           THE WITNESS:   -- southeast.   Essentially,  
6   everything that has a color along a block with the exception  
7   of Cole Spring Towers is within the subject, the surrounding  
8   area boundary.

9           MS. ROBESON:   Okay.   Any other objection, Mr.  
10   Brown?

11          MR. BROWN:   I think he meant to say Cole Spring  
12   Plaza, not Colesville Towers.

13          THE WITNESS:   I'm sorry.   Cole Spring Plaza.

14          MS. ROBESON:   Okay.   Anything else?

15          MR. BROWN:   No other objection.

16          MS. ROBESON:   Okay.   We'll allow it as Exhibit  
17   130.

18                         (Exhibit No. 130 was marked for  
19                         identification and received into  
20                         evidence.)

21          BY MR. HARRIS:

22          Q       Okay.   Go ahead.

23          A       In order to address the appropriateness of the  
24   density proposed, this exhibit illustrates an oblique view  
25   looking north a few blocks around the perimeter of the



1 property. As you can see, the site is located at the  
2 periphery of the CBD on a block that is defined by Cedar,  
3 Springvale, Ellsworth and Pershing. They're all labeled.  
4 There are four multi-family building sites located within  
5 one block of the subject property, and this does not include  
6 Cole Spring Plaza in this analysis.

7           The densities range from six units to the acre on  
8 the interior blocks of the Seven Oaks-Evanswood neighborhood  
9 to as high as 430 units to the acre within the CBD. The  
10 perpendicular -- actually, before I get into this, I'd just  
11 like to describe the plan a little bit just to give you a  
12 little bit of context.

13           The different colors represent general land use,  
14 general land uses. The lighter yellow would be the  
15 traditional single-family detached homes. The orange  
16 represent multi-family buildings in different  
17 configurations. The purple kind of reflects mixed-use.  
18 There's retail on the ground floor or office or some other  
19 uses. The blue are civic uses including parkland. So just  
20 to give you a sense of -- and there's some mixing.  
21 Obviously, along Cedar, there is some mixing of businesses  
22 with residential.

23           There is kind of this perpendicular transition  
24 from the CBD, and the CBD is located kind of on the bottom  
25 of the slide essentially, to moderate density one-family



1 neighborhoods at six units to the acre. And it ranges  
2 really from 112 units to the acre which has been approved  
3 for the downtown Silver Spring project which is labeled  
4 right there as unbuilt, 112 units per acre. So there is  
5 kind of this perpendicular transition from the CBD into the  
6 area outside the CBD.

7           So along kind of in this, the direction which is  
8 kind of going from the bottom or in a north/south direction,  
9 saying that the CBD would be on the south and the  
10 neighborhood to the north, you can see this kind of  
11 perpendicular transition from 112 units to the acre,  
12 downtown Silver Spring, 6 units and then the subject  
13 property in between at 14.6. There is a lateral transition  
14 as well which goes from kind of in an east/west direction on  
15 the block. The Colesville Towers at 220 units per acre  
16 laterally to Springvale Terrace at 58 units to the acre.  
17 There's also a lateral transition there as well.

18           The Chelsea Court, at 14.67 units per acre, is  
19 really a moderate density and appropriate as a transitional  
20 residential density. Certainly, this analysis illustrate  
21 that Chelsea, the Chelsea density at 14.67 is only 6 percent  
22 of the density of Colesville Towers which is this one right  
23 here. It's only 13 percent of the density proposed for the  
24 downtown Silver Spring project and approximately 25 percent  
25 of the density of the Springvale Terrace, certainly within,



1     within an appropriate range for transition.

2             Additionally, the proposed development is  
3     compatible with residential neighborhoods for a number of  
4     reasons as well. First, the proposed residential use  
5     replaces an institutional use within a residential  
6     neighborhood. Townhomes and one-family detached homes are  
7     both one-family building types. The proposed townhomes will  
8     be in fee-simple ownership similar to the majority of the  
9     homes in Seven Oaks-Evanswood neighborhood. The townhomes  
10    will not be multi-family structures, they will not be  
11    apartments and they will not have condominium ownership.

12            During the Chelsea School special exception  
13    hearing with the Planning Board, the Seven Oaks-Evanswood  
14    neighborhood made it very clear that the school use was  
15    considered incompatible with the neighborhood. Some of the  
16    concerns include, included that they viewed the site as a  
17    buffer area between the CBD and the single-family  
18    neighborhood so intensifying that buffer would have been  
19    problematic. Concerns over the architectural aesthetics,  
20    mainly building bulk and length. Concerns over excessive  
21    traffic activity including delivery trucks and traffic.  
22    Concerns on inadequate landscaping and excessive grading.  
23    Concerns over evening non-school activities. Concerns over  
24    school parking impacts on neighborhood streets.

25            The proposed townhomes, the proposed townhouse



1 residential use addresses these concerns. This development  
2 proposal is not removing one-family detached homes. It's  
3 removing an institutional use and replacing it with a  
4 compatible residential use.

5 Second, compatibility is enhanced by providing  
6 additional building setbacks along the three street  
7 frontages. Within the setbacks will be open space amenities  
8 in the form of public amenity areas that add visual relief  
9 and attractive green buffers.

10 Third, compatibility with the neighborhood is  
11 maintained by the proposed building orientation and massing.

12 As I mentioned, you know, working with the grade, the  
13 townhome rows, and I'll switch over to the Exhibit, is it  
14 130A?

15 MS. ROBESON: No. It's 30A.

16 BY MR. HARRIS:

17 Q 30.

18 A I'm sorry. 30A, duplicate. I'm sorry. 30A, the  
19 schematic development plan. Certainly, the orientation of  
20 the building and the massing is certainly maintained, again,  
21 with smaller, the ends of the townhomes along Springvale  
22 orienting onto or confronting opposite single-family  
23 detached homes and less of them too. I mean, the massing  
24 there would be such that they would appear to be six homes  
25 along that edge as opposed to confronting 13, 13 homes for



1     example, which is what's happening on the other side. All  
2     the buildings will orient towards streets or open space.

3             Also, I think this strategy is compatible. It's a  
4     compatible dialogue with single-family fronts onto the ends  
5     of townhomes that really appear like single-family homes as  
6     was demonstrated by and really discussed by Mr. Youngentob's  
7     discussion on the architectural character.

8             Fourth, again, architectural style will be  
9     traditional and contextual and complement the traditional  
10    styles that certainly are found within the neighborhood.

11            Fifth, compatibility is maintained by preserving  
12    and making enhancements to the historic Riggs-Thompson  
13    house. The applicant will be removing the non-historic  
14    elements and refurbishing the north side of the house in  
15    accordance with the Historic Preservation Commission  
16    guidance and the requirements of a Historic Area Work  
17    Permit, and that's an entirely different process. The  
18    historic home will remain as an iconic building of the past  
19    and certainly reinforce the sense of place to the  
20    residential neighborhood.

21            And finally, compatibility is maintained by  
22    keeping the existing traffic patterns and restrictions in  
23    place. This is addressed by the binding elements as well.  
24    This development will have a favorable overall traffic  
25    impact on the current institutional use. Our traffic



1 engineer will get into a little bit more of the nuances of  
2 the traffic use.

3 In all, I believe that the proposed Chelsea Court  
4 development is compatible with the Seven Oaks-Evanswood  
5 neighborhood because it does, reinstates the residential  
6 use. It provides additional setbacks and open space as  
7 buffers. It orients buildings to streets and/or open space.

8 It provides homes with a complementary architectural style.

9 It preserves and enhances the historic Riggs-Thompson house  
10 and also maintains and improves the existing traffic  
11 patterns.

12 Q With the exception of the setback along the  
13 boundary with the Cedar Street homes, does the plan meet the  
14 development standards of the RT-15 Zone?

15 A Sure. I'll kind of go over those. The  
16 development shown here on the schematic development plan,  
17 exhibit 30A duplicate, complies with the development  
18 standards outlined in Section 59-C-1.73 of the Zoning  
19 Ordinance. I'd like to go over some of these for the  
20 record.

21 The minimum tract area is proposed -- the minimum  
22 required under the zone is 40,000 square feet. This one's  
23 provided at 5.25 acres is provided as the minimum tract  
24 area. The maximum density, 15 units per acre is the maximum  
25 density required. This proposal is at 14.67 units per acre



1 provided. Moderately-priced dwelling units, 12.5 percent of  
2 the total unit count is required. It's being provided at  
3 10. Ten units are provided which meets that requirement.

4 As far as building setbacks are concerned, from  
5 land classified in a one-family zone, 30 feet is the minimum  
6 and this one's providing a 20, basically 22 feet is  
7 provided, and I'll show you where that is. So for a one-  
8 family zone, it's really referring to the southern property  
9 line where the non-resident professional offices is located,  
10 30 is the minimum required, 22 is being provided. However,  
11 in Section 59-C-1.73(1), it permits a reduction with  
12 Planning Board approval as long as it's a distance that's  
13 equal to the street, rear or side yard setback, if the  
14 applicant can demonstrate that a more desirable form of  
15 development will result. This requirement will need to be  
16 satisfied at subdivision and site plan but all indications  
17 are that the Planning staff was supportive as we went  
18 through the process.

19 MS. ROBESON: What's the basis for, I'm sorry to  
20 interrupt so mark your place, what's the basis for needing  
21 that waiver?

22 MR. HARRIS: For needing it or for allow, that  
23 justifies it?

24 THE WITNESS: Well, I can respond to kind of why  
25 it was --



1           MS. ROBESON:  Either.  I know that it's not a  
2   typical variant standard so need maybe is not but what is  
3   the basis for that?

4           THE WITNESS:  You would have to demonstrate that  
5   certainly the ends of the units, you know, that you're not  
6   impacting adjacent properties.  They're actually, these are  
7   all the rears of the units.  These ends are orienting to a  
8   rear.  That could be a justification for certainly the  
9   waiver.  Also, the site was somewhat compressed after  
10  meeting with the citizens groups in order to create the  
11  promenade kind of linear park that's on the north side  
12  along --

13          MS. ROBESON:  On Springvale.

14          THE WITNESS:  -- Springvale, along Springvale.  
15  This entire block essentially was shifted to the south so it  
16  was a trade-off essentially.  More valuable open space for  
17  kind of less valuable open space.  That in itself could be  
18  grounds for granting the waiver.

19          MS. ROBESON:  Okay.

20          THE WITNESS:  Setbacks from public street right-  
21  of-ways.  There's three public street right-of-ways.  The  
22  minimum required is 20 feet.  What is being proposed along  
23  Ellsworth is 22 feet along Ellsworth, and I'll show you  
24  where that is.  That's kind of at this pinch point right  
25  here along -- it's approximately, well, it's exactly 61.63



1 from Pershing which is provided, and that's right along this  
2 dimension here, and it's about 25-and-a-half feet at  
3 Springvale.

4           The building setback from an adjoining lot or side  
5 is eight foot minimum and there's eight foot minimum that's  
6 being provided. The building setback from an adjoining lot  
7 towards the rear, 20 foot minimum, and we're at 20 foot  
8 minimum provided. The maximum building height is 35 feet in  
9 the zone. Thirty-five feet is provided. Green area, the  
10 minimum required is 30 percent of the tract area which would  
11 equate to 1.57 acres. This proposal shows 2.4 acres or  
12 about 45.7 percent is the, is what's being provided.

13           On-street parking, the Code requires two spaces  
14 per townhouse or on this scenario, it would be 156 spaces so  
15 that would be the minimum required. Currently, this  
16 proposal is providing 2.18 spaces per unit which is, which  
17 equates to 168 spaces, 154 of those would be accessed from  
18 the rear alley. There would be two for the Riggs-Thompson  
19 home and 12 visitor spaces on Private Street A. They would  
20 be at an on-street parallel parking configuration.

21           The development proposal also meets the road  
22 design requirements that's described in 59-C-1.722 and  
23 Section 59-C-1.73(d)(2) for MPDUs.

24           BY MR. HARRIS:

25           Q     We've submitted binding elements that were



1 revised. I don't think you need to go through each of them  
2 but just generally, what's the intent of those binding  
3 elements in their combination.

4       A     I think, you know, at the Planning Board hearing,  
5 you know, just to ensure, give a little more assurance with  
6 regards to compatibility, you know, the Planning Board did  
7 suggest some additional binding elements and they, you know,  
8 they really wanted, were concerned about, you know, maximum  
9 building height to be 35 feet which is really what's  
10 required in the zone but, you know, if it needs to be on the  
11 binding elements that's, that's fine.

12           The question of parking was also made, they, you  
13 know, parking is really kind of related to compatibility as  
14 well in the sense that you want to provide enough adequate  
15 parking so that spillover parking doesn't occur in the  
16 neighborhoods, so to make sure that there's enough parking  
17 on site, you know, they suggested adding that binding  
18 element as well.

19           There are traffic restrictions as I mentioned.  
20 They've been around for quite awhile. They really protect  
21 the neighborhood from cut-through traffic. Those would be,  
22 would remain in place to the extent that they remain in  
23 effect. The preservation of the Riggs-Thompson house, you  
24 know, as required in the master plan, that also would be a  
25 binding element.



1           Also, with regards to green area, the binding  
2 elements at 40 percent. I mean, this schematic development  
3 plan being conceptual somewhat in nature, it shows about 45  
4 percent. There's just a little bit of give there with  
5 regards to the green but still, it's in excess of the  
6 minimum standard that's being proposed.

7           Additionally, the cap on the unit count at 77  
8 units, the 76 townhomes and single-family detached homes.  
9 Also, to ensure kind of that the public would have access to  
10 the public use spaces on the site, there would be a public  
11 use easement placed on these things so really, anyone from  
12 the community can really kind of come in. And easements are  
13 usually used in the CBDs for public use space and it's kind  
14 of the same, the same kind of deal. It's assurances that  
15 the public would be invited.

16           MS. ROBESON: What about the area surrounding the  
17 historic house? Is that part of the public use easement or  
18 is that going to be private, the historic house, Thompson  
19 house?

20           THE WITNESS: The subdivision hasn't been done yet  
21 on this.

22           MS. ROBESON: Right.

23           THE WITNESS: But my sense is that this would be  
24 carved out as lot essentially, but this is not really  
25 included in what we would consider the public accessible



1 area of the green area. The green area, there's really kind  
2 of two types. There's kind of the private, the semi-private  
3 as I described before and then there's the more publicly  
4 accessible of that 2.4 acres, and it's about half and half.

5 It's about 1.2 acres that would be publicly accessible  
6 which would include, you know, certainly this piece, that.

7 MS. ROBESON: Wait. The --

8 THE WITNESS: I'm sorry. The Ellsworth, the  
9 Ellsworth --

10 MS. ROBESON: Frontage.

11 THE WITNESS: -- Springvale Park. The linear park  
12 that would confront onto Springvale and then also, the park  
13 on Pershing that would anchor the other side along Pershing  
14 and Springvale. That, in essence, also, along a private  
15 street since it's not a public right-of-way, we would  
16 certainly add an access easement along the sidewalks that  
17 would occur along Private Street A as well. That  
18 essentially equates to the 1.2 acres that there would be a,  
19 some kind of easement on.

20 BY MR. HARRIS:

21 Q Okay. Let's turn to the master plan and first,  
22 let me ask you whether you're familiar with the adopted 2000  
23 North and West Silver Spring Master Plan.

24 A Sure. I'm very familiar with the approved and  
25 adopted North and West Silver Spring Master Plan. I joined



1 the project team at Park and Planning shortly after the  
2 public hearing draft was released in early 1999. At that --

3 MS. ROBESON: As staff you mean.

4 THE WITNESS: As staff.

5 MS. ROBESON: Okay.

6 THE WITNESS: I was the urban designer for the  
7 plan.

8 MS. ROBESON: Okay.

9 THE WITNESS: Okay. The plan was delayed for six  
10 months by the Planning Board in order to resolve issues with  
11 Montgomery Hills which is a chapter in there. It's a  
12 commercial area along Georgia Avenue. Also, I'm very  
13 familiar with the revitalization efforts in the CBD and I  
14 reviewed most of the CBD regulatory cases during my tenure  
15 there at Park and Planning which is about seven years.

16 BY MR. HARRIS:

17 Q And did you have occasion to review that plan now  
18 in conjunction with this project in order to determine its  
19 consistency with that plan?

20 A Yes. Master plans are land use planning documents  
21 that provide guidance for the general development of an area  
22 they address. Specific compliance with recommendations of a  
23 master plan or sector plan is not a requirement for  
24 reclassification to an RT zone. In this case, there are no  
25 specific recommendations regarding the redevelopment of the



1 subject property.

2           During the master plan process, the Chelsea School  
3 was a viable institutional use and therefore, was not  
4 considered for development. Although the Chelsea School is  
5 a relatively large parcel, the master plan did not recommend  
6 any changes and alternative land uses were not studied or  
7 considered during the master plan process. The simple fact  
8 is that the institutional use was not in question. As such,  
9 the master plan reconfirmed the R-60 zoning classification  
10 which is typical of master plans.

11           The master plan reconfirms the institutional land  
12 use and the R-60 zoning classification while recognizing it  
13 was not and would not be single-family detached homes. The  
14 site contained a school for over 70-plus years and there was  
15 no indication that the school use would change, only that it  
16 would continue as a viable school. In the master plan,  
17 there is a reference map, map 8 and 9 in the North and West  
18 Silver Spring Master Plan which I'm pretty sure is admitted.

19           MS. ROBESON: Well, actually, one thing I noticed  
20 when, and I'm not going to grab that master plan for you,  
21 from you at the moment, but I could not find a complete  
22 version of the master plan in the record so I would ask that  
23 since we are going to a second date, that someone put the  
24 entire thing in the record since it's sort of at the vortex  
25 of the controversy to speak.



1 THE WITNESS: Okay.

2 MS. ROBESON: I'm not going to take it from you  
3 right now but --

4 THE WITNESS: This is a 1st edition.

5 MS. ROBESON: Okay. Well, we want the last  
6 edition so okay. Continue.

7 THE WITNESS: But within the North and West Silver  
8 Spring Master Plan, there is a reference map 8 and 9 which  
9 shows the subject property. The maps are entitled "Existing  
10 and Proposed Land Uses@, page 19 or pages 18 and 19. So  
11 there is reference with regards to an institutional use on  
12 the property.

13 Master plans are opportunities for land owners to  
14 influence policy decisions with respect to the future  
15 development of land. As such, property owners are  
16 stakeholders in the process and can argue for zoning  
17 recommendations. The Planning staff weighs a potential  
18 request and evaluates that request in the context of related  
19 planning issues. The discussion of townhomes along Georgia  
20 Avenue was evaluated simply because there was interest from  
21 a property owner. It is unrealistic for Planning staff to  
22 evaluate every property as a suitable site for townhouses or  
23 any other potential use due to the limited time that a  
24 master plan takes and the human resources that goes into  
25 putting together these documents. This point was reiterated



1 by Nancy Sturgeon, the project manager for the North and  
2 West Silver Spring Master Plan, at the Planning Boar hearing  
3 last Thursday, May 19th.

4 BY MR. HARRIS:

5 Q In your opinion, how is the proposed zoning  
6 consistent with the master plan recommendations?

7 A The proposed reclassification of the subject  
8 property from the R-60 Zone to RT-15 is in general  
9 conformance with the master plan. Master plan documents are  
10 typically organized by themes or by area. This particular  
11 plan is a little of both. The plan has five major chapters  
12 of which I think three generally apply to the subject  
13 property.

14 The first chapter entitled "Community  
15 Preservation, Stability and Character@ addresses preserving  
16 the existing residential character of the North and West  
17 Silver Spring neighborhoods. In the introduction of this  
18 chapter, the plan describes the established neighborhoods  
19 and articulates the intent of the master plan as, quote, "is  
20 to preserve the existing residential character and to  
21 reinforce the many desirable features,@ unquote. That's on  
22 page 15 of the plan. The plan goes on to describe a  
23 liveable community, describes that a liveable community is  
24 sustained when, quote, "Its best attributes are recognized,  
25 reinforced and enhanced.@ That's also on page 15. The plan



1 also recognizes that residential character is affected by  
2 traffic, non-residential uses and adjacent or commercial  
3 uses as well.

4           The general recommendations for this chapter  
5 include one, I'll quote, "Preserve the residential character  
6 of the North and West Silver Spring neighborhoods,@ page 16.

7 This recommendation speaks to preserving the character and  
8 making enhancements to the neighborhood. The proposed  
9 development provides enhancements to the neighborhood  
10 specifically noted such as street improvements including  
11 streetscape, landscaping, lighting and sidewalks as well as  
12 gathering places such as the significant open space  
13 amenities that are proposed and will be open to the  
14 neighborhood at large. Additionally, the proposed townhomes  
15 replace an institutional use with a residential use.

16           Two is to limit the impact of traffic in  
17 residential neighborhoods, also on page 16. The proposed  
18 traffic resulting from the proposed development compares  
19 favorably than that of the current school use for the  
20 approved expansion in the special exception approval. Our  
21 traffic engineer, again, will address these issues in his  
22 traffic testimony.

23           Three, limit commercial zoning to the areas  
24 recommended in this plan. The proposed development is for a  
25 one-family development and will not have commercial



1 development associated with it. The plan does describe  
2 where commercial zoning is appropriate elsewhere in the plan  
3 such as the Brookville Road area, Cameron Street, the Spring  
4 Center and the Montgomery Hills area.

5           The existing Chelsea School does in fact share  
6 some of the qualities that a commercial use has such as  
7 regular truck deliveries, additional truck impacts or  
8 traffic impacts I should say, large buildings with big  
9 footprints which also have grading considerations as well.  
10 Their service areas that are associated with them. There  
11 are large parking areas as well and kind of this lack of  
12 late nighttime activity. Those are all kind of associated  
13 with commercial uses.

14           Four, designate the recommended historic resources  
15 on page 2. The historic Riggs-Thompson house, circa 1850,  
16 is located on the property and has been designated on the  
17 historic master plan. The plan identifies it as property  
18 36/8 on page 29 of the plan. The proposed townhome, the  
19 townhome development places the historic house back into a  
20 residential context and it also restores it as a residential  
21 use. Preservation, restoration and complete integration of  
22 the historic Riggs-Thompson house with the proposed  
23 community will further enhance the sense of place and  
24 community stability. The plan clearly establishes the  
25 environmental setting as 37,056 square feet in area, and



1 that's quoted on page 29 of the plan.

2           Also, there's a reference in Appendix D, and I  
3 should mention that the appendices in master plans, they're  
4 kind of a slice in time if you will because with, contained  
5 within this plan, there are some market studies that are  
6 clearly no longer valid, there's a traffic study as well but  
7 that's why they're appendices. The language really that's  
8 contained in the main body of the plan is really what, what  
9 really needs to be paid attention to.

10           The specific plan recommendations for the North  
11 Silver Spring area -- the plan is really divided into two  
12 areas, West Silver Spring and North Silver Spring, they were  
13 too small to have separate plans so they were combined by  
14 the Planning Board at the time but there are some specific  
15 recommendations in the North Silver Spring area. The first  
16 is to reconfirm the existing residential zoning in North  
17 Silver Spring except as recommended below, which is on page  
18 21, and to provide guidance for the possible redevelopment  
19 of townhomes along Georgia Avenue, also on page 21.

20           When townhouse feasibility was discussed for other  
21 sites during the master plan process, it was assumed that  
22 the Chelsea School site would remain as a viable use and  
23 therefore, by default, the R-60 zoning was reconfirmed.  
24 Every master plan and subsequent sectional map amendment is  
25 a reconfirmation of zoning. It does not change. But this



1 does not preclude floating zone changes elsewhere in the  
2 County.

3           There are numerous zoning cases where RT zoning  
4 was granted without master plan designation. I'll mention  
5 three. There are three in particular. G-798, which is the  
6 Good Counsel property located in Wheaton just up on Georgia  
7 Avenue, there's G-839, the Christian Life Property, and G-  
8 858, the Katz property, also known as MCAD, which is the  
9 Montgomery College of Art and Design. They're all relevant  
10 since the master plan did not specifically recommend RT  
11 zoning, and there were other sites in that relevant master  
12 plan that had specific re-zoning recommendations for  
13 individual single-family home properties.

14           The plan does provide guidance for the possible  
15 redevelopment of townhomes along Georgia Avenue on page 21.  
16 These guidelines were specific to those sites along Georgia  
17 Avenue only where at the time, there was interest in  
18 developing townhomes. The plan does not specifically  
19 recommend townhomes. However, the Courts of Woodside  
20 project, which is Case No. G-817, was approved for townhomes  
21 in accordance with the general master plan guidance given  
22 since the master plan really fell short of a specific RT  
23 zoning recommendation for that property. Most other  
24 floating zone sites are decided on a case-by-case basis.

25           The second chapter in the master plan that applies



1 to this case is entitled "Commercial Centers-Character and  
2 Vitality@ and addresses preserving the existing residential  
3 character of the North and West Silver Spring neighborhoods.

4 The non-residential professional office referenced are  
5 between the Seven Oaks-Evanswood neighborhood and the  
6 residential phase of the downtown Silver Spring project to  
7 the south and confronting the CBD. They have been  
8 appropriately, they have appropriately been recommended for  
9 more intense commercial uses as non-resident professional  
10 offices under special exceptions.

11 The plan further describes the non-resident  
12 professional offices as somewhat isolated, this is a quote,  
13 "somewhat isolated from the other single-family homes in  
14 the neighborhood by the Chelsea School,@ unquote. Page 44  
15 of the plan. This implies, in my mind, that both the  
16 school, a non-residential use, in conjunction with the non-  
17 residential professional office was considered a buffer or  
18 transitional area.

19 The development of the subject property with  
20 townhouses, in combination with the non-residential  
21 professional offices, will serve as an appropriate  
22 transition from the CBD to the existing homes in the Seven  
23 Oaks-Evanswood neighborhood and it creates a significant and  
24 stable buffer for the single-family residential communities.  
25 Stability, also a key word too, is maintained in the sense



1     that home ownership is often an indicator of stability. The  
2     proposed townhomes will be in fee-simple ownership.

3             The master plan's silence on future development of  
4     the, on the future development of the property does not  
5     preclude the implementation of a floating zone if it meets  
6     that other required elements of the intent and purpose of  
7     the requested zone.

8             The third chapter that applies in the master plan  
9     is entitled "Neighborhood-Friendly Circulation Systems@ and  
10    primarily addresses transportation and mobility within the  
11    master plan area. The general plan, the general  
12    recommendations for this chapter include to protect the  
13    residential neighborhoods from commercial and through  
14    traffic. This is on the plan, page 69. This recommendation  
15    addresses cut-through traffic impacts to the neighborhoods  
16    and reaffirms the County's policies regarding the current  
17    traffic restrictions that are in place. The proposed  
18    development and binding elements address this  
19    recommendation.

20            The second general recommendation is improve  
21    pedestrian access to shopping areas and community facilities  
22    by providing wide, tree-line sidewalks throughout the area  
23    and other improvements for safe pedestrian street crossings.  
24    This is on the plan, page 69. This recommendation  
25    addresses pedestrian accommodations to and from the



1 neighborhoods. The new street improvements, including  
2 sidewalks, directly address this recommendation.

3 Ellsworth Drive is an important connection to the  
4 heart of the CBD and quite frankly, probably used frequently  
5 by the residents in the neighborhood. It leads directly to  
6 the Metro. Accommodations within the CBD have insured that.

7 It's a very pleasant walk there. Pershing Drive also  
8 provides access to Whole Foods, to the rear where the  
9 parking lot is, and other community facilities such as the  
10 civic building and Veterans Plaza.

11 Q In your professional opinion, is the application  
12 substantially in conformity with the master plan  
13 recommendations that you've outlined?

14 A In my professional opinion, the proposal meets the  
15 applicable objectives and is in substantial conformance with  
16 the recommendations contained in the master plan.

17 Additionally, I would like to add that the appropriateness  
18 for townhomes is in keeping with the goals and objectives of  
19 the approved Housing Element of the General Plan per Council  
20 Resolution 17-78 adopted March 29th, 2011.

21 Some of the highlights of the General Plan Housing  
22 Element would include that the County will need over 75,000  
23 additional housing units in the next 20 years which is quite  
24 substantial. Four percent or approximately 14,000 acres of  
25 the County's land zoned for development remains undeveloped.



1 Most of that land is in environmentally sensitive areas,  
2 scattered and with very few large assemblages. Ninety-one  
3 percent of the County's zoning capacity has been reached.  
4 Housing needs cannot be met by traditional patterns of low-  
5 density development that push ever outward and new housing  
6 must take, I'm sorry, new housing must make the most out of  
7 opportunities near high-quality transit.

8 Q Before we proceed, I'd like to --

9 A I need to finish.

10 Q Oh, I'm sorry.

11 A I'm sorry.

12 Q Okay. Well, let me introduce this and --

13 A Okay.

14 MR. HARRIS: I have here a copy of the Housing  
15 Element in its Planning Board draft form and then the County  
16 Council resolution approving that.

17 MS. ROBESON: And is this the Housing Element of  
18 the, on Wedges & Corridors?

19 THE WITNESS: Yes. That's the general plan.

20 MS. ROBESON: I know. Okay. Exhibit 131 will be  
21 the Council Resolution and I'm just going to mark this  
22 separately, 132 will be the Housing Elements of the general  
23 plan. Mr. Brown, do you have any objections?

24 MR. BROWN: I have some comments to make about the  
25 presentation that include concerns about the way these are



1 being presented at this time, but I'm not going to object to  
2 their admission as exhibits.

3 MS. ROBESON: Okay. They are what they say they  
4 are. Is that what you're saying?

5 MR. BROWN: I'm being a little cryptic but I want  
6 Mr. Harris to finish before I explain my problem.

7 MS. ROBESON: Okay.

8 MR. BROWN: Thank you.

9 MS. ROBESON: So are you not objecting to them  
10 being --

11 MR. BROWN: I'm not objecting to these exhibits.

12 MS. ROBESON: Okay. So 131 will be Council  
13 Resolution 17-78 and 132 will be the Housing Elements of the  
14 General Plan. (Exhibit Nos. 131  
15 and 132 were marked for identification  
16 and received into evidence.)

17 BY MR. HARRIS:

18 Q Okay. Go ahead. You want to --

19 A No, I'm done.

20 Q You're done. Okay. Have you had an opportunity  
21 to review the schematic development plan and the application  
22 in connection with the impact of public facilities and if  
23 so, can you address that with the exception of traffic  
24 which --

25 A Sure.



1 Q -- we will have someone else address?

2 A Yes. The proposed development has adequate  
3 proximity to fire and rescue. Station, I believe it's 1, is  
4 located on Georgia Avenue and the CSX tracks within the CBD  
5 and that's the closest one in proximity.

6 Regarding schools, the subject property is located  
7 within the Sligo Creek Elementary School, Silver Spring  
8 International Middle School and Northwood High School  
9 attendance boundaries. In a letter from Bruce Crispell,  
10 Director of Long Range Planning for the Montgomery County  
11 Public School System, dated April 13th, 2011 and referenced  
12 as attachment 5 of the Staff Report, finds adequate capacity  
13 for middle and high school, however, inadequate capacity for  
14 the elementary school. This would require a, what is  
15 called, referred to as a school facility payment at the time  
16 of subdivision assuming it meets all the tests and testing  
17 requirements for it.

18 Q On that point, before you continue, you used the  
19 word inadequate. Does that mean that the County does or  
20 does not allow development to go forward if they pay the  
21 school facilities payment?

22 A How it's been explained to me is there are three  
23 different classifications that measure capacity and it's  
24 green, yellow and red, like a traffic light essentially.  
25 Green would indicate a condition where capacity, there's



1 plenty of capacity within a school. Yellow is that it's  
2 within an acceptable range, plus or minus, but still  
3 acceptable. Red means that it completely exceeds and  
4 cannot, cannot really have any additional capacity, and you  
5 really can't proceed with development with regards to that.

6

7           Currently, this school is at yellow for, for the  
8 Sligo Creek Elementary School and it's really just slightly  
9 into the yellow piece of it. However, I should mention that  
10 Sligo Elementary School does have capacity as an individual  
11 school but when they measure capacity as general, they  
12 measure the cluster so it, the school, individually, while  
13 it's still in yellow, really, truly has capacity for  
14 additional students.

15           Q     And is it your understanding that this project  
16 would be allowed to go forward upon payment of the school  
17 facilities payment?

18           A     Yes, it would.

19           Q     Okay. Go ahead.

20           A     Regarding traffic, again, the traffic consultant  
21 will testify to that. Regarding the adequacy of public  
22 facilities for stormwater management, street design, water  
23 and sewer and other site engineering components, our civil  
24 engineer will testify as well. Additionally, I should  
25 mention that at the time of subdivision, our preliminary



1 plan of adequate public facilities will be determined at  
2 that time.

3 Q In your opinion, does the Chelsea Park project  
4 serve the public interest?

5 A Yeah. The schematic development plan is very much  
6 in the public's interest. In determining the public  
7 interest, the District Council looks at Master Plan  
8 conformity, the Planning Board and Planning staff  
9 recommendations, impacts on public facilities or the  
10 environment and public policy goals as well. This proposal  
11 meets all of these criterias and I would like to add the  
12 following.

13 This proposal, this proposed re-zoning exemplifies  
14 smart growth principles with the redevelopment of the site  
15 for residential near existing public infrastructure. In  
16 particular, maximizing the public's investment in transit.  
17 The townhouse use, the townhouse use addresses the long-term  
18 policies outlined in the Housing Element of the General  
19 Plan. The proposed re-zoning is also in keeping with the  
20 goals of regional policy documents such as the recently  
21 drafted planned Maryland which the draft is April 2011 which  
22 was prepared by the Maryland State Office of Planning.

23 The proposed re-zonings will also add to the stock  
24 of moderately-priced dwelling units within the County. The  
25 proposed development will contribute to the diversity of the



1 housing stock in Silver Spring by offering more choices for  
2 future residents. The proposed re-zoning creates a new  
3 publicly accessible open space and will benefit the  
4 neighborhood at large. The proposed townhomes replace a no  
5 longer viable institution with a more compatible residential  
6 use.

7           The Planning Board staff and Planning Board,  
8 acting in the public's interest, recommended approval of  
9 this re-zoning at the hearing held on May 19th. In my  
10 professional opinion, the proposed re-zoning for Chelsea  
11 School, Chelsea Court from R-60 to RT-15 is in conformance  
12 with the Montgomery County Zoning Ordinance in substantial  
13 conformance with the approved and adopted North and West  
14 Silver Spring and is in the public's interest. This ends my  
15 testimony.

16           MR. HARRIS: I have one final exhibit that you  
17 can't really look at now but --

18           MS. ROBESON: Okay.

19           MR. HARRIS: This is a DVD recording or a CD  
20 recording, I never know the difference, it says DVD-R on it  
21 so I'll go with DVD, of the Planning Board hearing on May  
22 19. We've referenced it a number of times for various  
23 witnesses and should the Hearing Examiner want to review it  
24 personally, I think it should be made part of the record  
25 here and this does preserve it, you know, on into the



1 future.

2 MS. ROBESON: Mr. Brown?

3 MR. BROWN: I most certainly encourage that.

4 MS. ROBESON: All right. We'll mark it as 133,  
5 DVD of Planning Board hearing 5/19/11.

6 (Exhibit No. 133 was marked for  
7 identification and received into  
8 evidence.)

9 MR. HARRIS: And that is all Mr. Iraola has. He's  
10 going to take a breather now and submit him to cross-  
11 examination.

12 MS. ROBESON: I'm not sure that's a breather  
13 but --

14 MR. HARRIS: No. Yes. A brief breather, yes.

15 MS. ROBESON: Mr. Brown?

16 MR. BROWN: Ms. Robeson, I am impressed by the  
17 thoroughness and the details presented by Mr. Iraola and I  
18 don't object to his testimony although by my count, I  
19 believe he just finished reading page 21 of a written  
20 single-spaced analysis of the plan and his testimony. And  
21 I'm not even going to object, notwithstanding the fact that  
22 this Board's rules require, a month before a hearing begins,  
23 for the applicant to submit a summary of the testimony of  
24 witnesses and in Mr. Iraola's case, we did not get a 20-page  
25 testimony, a 10-page testimony or even a 1-page testimony.



1 Exhibit 31 in this record contains one sentence about Mr.  
2 Iraola's testimony.

3 I have had Exhibit 30A for a month. I am prepared  
4 to cross-examine Mr. Iraola on an exhibit that's been in the  
5 record for a month today. We can sit here for another hour  
6 and I will do that, but I am not prepared to cross-examine  
7 him on oral presentation of what could easily have been  
8 presented as written testimony so that I could have examined  
9 it and prepared cross-examination in advance of the hearing.  
10 It is utterly unreasonable to expect me, at 6:00 at night,  
11 to be able to cross-examine him effectively on an hour-and-  
12 a-half of recitation of a written report that he read aloud  
13 rather than submit it for the record.

14 MS. ROBESON: Well, it is in the record. It's  
15 been in the file. I have it marked as Exhibit 23A, the land  
16 use and zoning report.

17 MR. BROWN: That is not what we heard today.

18 MS. ROBESON: What did we hear today?

19 MR. BROWN: We heard all kinds of new information  
20 and references to earlier re-zoning proceedings and all  
21 kinds of stuff that I've never heard from him before.  
22 Either he can provide us --

23 MS. ROBESON: Okay. Just a second. Just a  
24 second. I'd like to hear Mr. Harris' side.

25 MR. HARRIS: The report which you referenced is 29



1 written pages and a number of tabs. No, it is not what Mr.  
2 Iraola just recited there. Those are his words that  
3 coincide with this. If this isn't a summary of what he has  
4 said, then I'm a monkey's uncle because no, he did not,  
5 everything he said didn't, wasn't in this report. If it  
6 were, we wouldn't have to bring him as a witness. That's  
7 the purpose of having a live witness.

8 MS. ROBESON: Mr. Brown?

9 MR. BROWN: I am prepared --

10 MS. ROBESON: I have to say that I didn't hear  
11 anything new today that wasn't in the report. I can't  
12 remember every detail of the report but I didn't hear  
13 anything new in his substantive testimony. The only thing  
14 that I did hear new, and I can't, frankly, remember whether  
15 it was in the report or not, is that he was staff to the  
16 2000 master plan but as to the rest, it seems relatively  
17 consistent with the reports.

18 MR. BROWN: Plus we got Exhibits 131 and 132 which  
19 I said I don't have any objection to their being admitted  
20 but I've never seen these before.

21 MS. ROBESON: And 130 and --

22 MR. BROWN: And another thing that's supposed to  
23 be done is that substantial exhibits are supposed to be  
24 submitted for the record a month in advance. There's no  
25 reason any of these couldn't have been submitted in a month



1 in advance. If they had something to do with the testimony,  
2 why weren't they attachments to this land use and planning  
3 report?

4 MR. HARRIS: They weren't approved then.

5 MR. BROWN: This says July 2009.

6 MR. HARRIS: It wasn't approved until the  
7 resolution.

8 MS. ROBESON: Wait. What are you talking -- okay.  
9 That's a public record --

10 MR. HARRIS: Yes.

11 MS. ROBESON: -- that we could take official  
12 notice of in any event so I don't look at that as an expert  
13 report because it is what it is. It's the Housing Elements  
14 Plan. And I think that while it may not have crossed -- I  
15 don't think our standard requires verbatim repetition of  
16 this report. I did not see, I understand what you're saying  
17 but I did not see anything that, in listening to his  
18 testimony, that was outside of what I read in his report so  
19 I'm going to overrule your objection, and do you have any --  
20 well, if it was an -- you didn't object so is there  
21 something, you didn't object to these exhibits coming in so  
22 I guess my question is do you have any, is there something  
23 you want to request of me based on --

24 MR. BROWN: I would like to get a transcript of  
25 Mr. Iraola's testimony and cross-examine him on it at the



1 next session. I would also like to begin the cross-  
2 examination today by talking about an exhibit I did prepare  
3 on which was Exhibit 30A. I don't want to waste time or not  
4 take advantage of the time that we have.

5 MS. ROBESON: Well, we have a transcript prepared  
6 in any event and it is in the record within five or seven  
7 business days, so it will be available before June 6th.

8 MR. BROWN: If I could get that transcript and  
9 continue my cross --

10 MS. ROBESON: It is your responsibility to come  
11 and, you know, make the copy.

12 MR. BROWN: I understand. But if I could get a  
13 hold of that transcript and conclude my cross-examination on  
14 June 6th and begin it now by asking him primarily about  
15 Exhibit 30A, I think we make substantial progress and I  
16 haven't, and I would have no grounds to complain.

17 MS. ROBESON: Mr. Harris?

18 MR. HARRIS: We are set to adjourn at 7. I think  
19 we should use that time for the cross-examination. It is --  
20 any witness who testifies is saying things that we don't  
21 have knowledge of before that witness spoke or there  
22 wouldn't be any purpose of that witness speaking. Any  
23 attorney prepares cross-examination on the fly while  
24 listening to the witness' testimony. The land use report  
25 clearly embraces what Mr. Iraola talked to. Yes, maybe he



1 was more specific but that's the purpose of the hearing.

2 MS. ROBESON: Okay. Well, let's see how far we  
3 get because I also have questions for, so between your  
4 questions and my questions, let's see how far we get. It  
5 may be that we can simply end at 7 and leave Mr. Brown the  
6 opportunity to continue cross-examination. Mr. Brown, ask  
7 your questions and then I can follow up with mine.

8 CROSS-EXAMINATION

9 BY MR. BROWN:

10 Q Mr. Iraola, is that how I say it?

11 A Iraola.

12 Q Iraola. We're going to talk about Exhibit 30A.  
13 This is the latest version of the schematic development  
14 plan, correct?

15 A Yes, it is.

16 Q And I believe you testified that it shows 2.4  
17 acres of recreational open space?

18 A Of green area.

19 Q Green area. And that that's 45 percent of the  
20 gross tract area.

21 A That is correct.

22 Q Now, where did the information to that effect come  
23 from? Did you provide this information to the engineer or  
24 did the, did you read this from the engineer's information?

25 A This is provided by the engineers who, Bowman



1     Engineering, Consulting.

2           Q     Well, do you believe that these numbers are  
3     correct?

4           A     Yes, I do.

5           Q     And why do you believe they're correct?  Are you  
6     simply relying on the engineer or do you have an independent  
7     judgment?

8           A     I rely on -- they are professional engineers and  
9     this is a sealed plan, nothing that would suggest that  
10    there's incorrect information on here.

11                MR. HARRIS:  In light of that question, I'm  
12    curious to know are you, you seem to be implying that they  
13    are incorrect and if you have some other evidence to that  
14    effect --

15                MS. ROBESON:  Well, wait.  We're not there yet.  
16    Just --

17                MR. HARRIS:  But I mean, I don't think he should  
18    be implying that this is incorrect and --

19                MS. ROBESON:  Well, he --

20                MR. HARRIS:  Okay.

21                MS. ROBESON:  -- has the right to cross-  
22    examination.  He can raise issues regarding the accuracy of  
23    the plan.  So, Mr. Brown, do you, I think he answered your  
24    question that it's sealed and he has no reason to believe  
25    it's incorrect.  Do you have a follow-up question?



1 MR. BROWN: Yes, I do.

2 MS. ROBESON: Okay.

3 MR. BROWN: It takes time and I'm not --

4 MS. ROBESON: That's fine. I want you --

5 MR. BROWN: And I'm not rushing myself.

6 MS. ROBESON: -- to take your time. That's fine.

7 BY MR. BROWN:

8 Q Mr. Iraola, I'd like you to take out Exhibit 11.

9 A Do you have a title for that one?

10 MR. HARRIS: What is Exhibit 11?

11 MR. BROWN: Exhibit 11 is the first schematic

12 development plan that was presented with the application

13 back in the fall.

14 MS. ROBESON: I have it labeled as schematic

15 development plan which includes information on water and

16 sewer. I can see if I have it in the record. It would be

17 helpful -- is it a large plan?

18 MR. BROWN: It's the same kind of plan.

19 MS. ROBESON: I just need to know where to look in

20 the file.

21 (Discussion off the record.)

22 MS. ROBESON: I have it. Here it is. So, Mr.

23 Harris, do you have a copy?

24 MR. HARRIS: I have, I think I have a copy.

25 MS. ROBESON: Well, then to eliminate any doubt --



1 MR. HARRIS: Okay. Okay.

2 MS. ROBESON: -- we'll use what's in the record as  
3 long as it doesn't get mixed up with anything --

4 MR. HARRIS: Fine.

5 MS. ROBESON: -- down there.

6 MR. HARRIS: Okay.

7 THE WITNESS: Okay.

8 BY MR. BROWN:

9 Q Do you have Exhibit 11, Mr. Iraola?

10 A I do. Um-hum.

11 Q Have you examined it before?

12 A No, I have not.

13 Q Well, please take your time. Look at note no. 12  
14 in the general notes.

15 A Okay.

16 Q What does it say?

17 A It says this conceptual site proposes 1.5752 acres  
18 of recreational/open space.

19 Q And that happens to, 1.5725 -- 1.5752 acres is 30  
20 percent of 5.25 acres, isn't it?

21 A I don't have a calculator.

22 Q I'll loan you one.

23 A Thirty percent.

24 Q That's the --

25 A Yes. I concur. It's 30 percent.



1           Q     And that matches the green area statement down  
2 below, correct, 30 percent minimum?

3           A     Yes, it does.

4           Q     So in this version, which I notice is not  
5 certified by an engineer, it states that there is 1.572,  
6 1.5752 acres or 30 percent of green area open space.

7           A     No, it doesn't. It says this conceptual site  
8 proposes 1.5752 areas of recreational/open space. Green  
9 area is a totally different thing.

10          Q     Take a look at what I've highlighted on this copy,  
11 Mr. Iraola, and see if you agree with me that those  
12 highlighted areas add up to 1.5752 acres.

13          A     May I see the document?

14          Q     Sure.

15          A     Do you want me to add all these up right now?

16          Q     Yes.

17          A     Okay.

18                MR. HARRIS: While he's doing this, I'm fine with  
19 a little liberty in this but this plan has been  
20 supplemented, replaced by a different schematic development  
21 plan so I'm not sure that I understand.

22                MS. ROBESON: Are you questioning, are you  
23 objecting based on relevance?

24                MR. HARRIS: Yes.

25                MS. ROBESON: Mr. Brown, is there some reason



1     that --

2                   MR. BROWN:  I'm going to draw a connection between  
3     the two plans.

4                   MS. ROBESON:  Okay.  Well, I'll go with you.  I  
5     would like, you know, to know that there is some relevance  
6     to it.

7                   THE WITNESS:  I get 1.5252.

8                   BY MR. BROWN:

9           Q     Did you add the strip of open space at the top?

10                  MS. ROBESON:  When you say at the top, is that the  
11     one along Springvale?

12                  MR. BROWN:  Yes, ma'am.

13                  THE WITNESS:  There is no, there's no area called  
14     up on this exhibit.

15                  BY MR. BROWN:

16           Q     Can you estimate it using the scale?

17                  MS. ROBESON:  Okay.  Mr. Brown?

18                  MR. HARRIS:  Now we're --

19                  MS. ROBESON:  Can you just give me a hint as to  
20     where this is going?

21                  MR. BROWN:  Well, I very carefully measured this  
22     and I find that the total amount of open space on this plan  
23     matches the 1.5725 acres represented on that plan, 30  
24     percent.

25                  MR. HARRIS:  But if it does, it does.  I don't



1 know whether it does but I think it's irrelevant what is on  
2 that plan. That's not the plan that's being presented here  
3 today.

4 MR. BROWN: I'm going to ask the next question  
5 now.

6 MS. ROBESON: Okay.

7 BY MR. BROWN:

8 Q Mr. Iraola, would you look at the two plans and  
9 tell me if you see any significant increase in the amount of  
10 open space between the original plan and the final plan?

11 A Before I --

12 Q Do you see, for example, 0.9 of an acre of an  
13 increase in open space as between the two plans?

14 A I can't, I can't make that determination right now  
15 looking at this plan. I'm not that familiar with this plan.  
16 I will say one thing. I think that the terms are being  
17 misused. Green area is the requirement. Open space is not,  
18 is not a requirement.

19 MS. ROBESON: All right.

20 THE WITNESS: Nor is recreational. It has a  
21 different --

22 MS. ROBESON: Okay.

23 THE WITNESS: -- definition.

24 MS. ROBESON: You've answered his question which  
25 is you can't make the determination right now.



1 THE WITNESS: That's correct.

2 MS. ROBESON: Your attorney will elicit any  
3 further information. While you're taking a minute, Mr.  
4 Brown, I had some questions. Mr. Brown, why don't you take  
5 a few minutes and look in that. When I was -- do you have  
6 the exhibit showing the comparison of densities which is 130  
7 I think?

8 Okay. Just when I was reviewing this case and  
9 looking at the master plan, I noticed that the master plan  
10 had some language in it about stabilizing the edges of this  
11 community, the residential community, and I guess I'm not  
12 as, and I also read in Technical Staff Report that something  
13 like well, a single-family attached is, a single-family is a  
14 single-family is a single-family whether it's attached or  
15 not attached. I think it went so far to say that there was  
16 a presumption of, you know, residential is always  
17 residential and I'm not sure I agree with that. So I guess  
18 my question is the way this property is, there's one little  
19 square along Wayne Avenue and the Springvale Terrace or the  
20 58 --

21 THE WITNESS: Yes.

22 MS. ROBESON: -- DU property, and I guess what I'd  
23 like you to address is it seems to me that the, that the  
24 location of this kind of isolates that square from the rest  
25 of the single-family detached homes and does that stabilize



1     that edge or does that not stabilize that edge?

2                 THE WITNESS:   Are you saying, you're referring to  
3     this?

4                 MS. ROBESON:   Yes.   And I don't know how you --  
5     it's south of the Springvale Terrace and east of the subject  
6     property.

7                 THE WITNESS:   Right.   It's defined by Cedar,  
8     Pershing, Springvale and Wayne.

9                 MS. ROBESON:   Exactly.

10                THE WITNESS:   Okay.   That is an edge condition but  
11     I think the master plan really speaks to the edges along the  
12     CBD primarily of the neighborhood.   The neighborhood goes up  
13     to, Colesville Road I believe is the dividing line between  
14     the neighborhood, and I think this is a different  
15     neighborhood.   In the neighborhood plan on page, there's a  
16     -- okay.   On map 7 on page 17 of the plan, you can kind of  
17     see where they determine the neighborhoods are.

18                MS. ROBESON:   Okay.   I don't have, do I have that  
19     map 7?   I don't know if I have that in the, maybe I do.  
20     What page is it on?

21                THE WITNESS:   Page 17 of the plan, map 7.

22                MS. ROBESON:   Page 17?

23                THE WITNESS:   Right.

24                MS. ROBESON:   Okay.   Map 17.

25                MR. HARRIS:   Do you want a hard copy of the plan



1     that might be easier to read?

2                 MS. ROBESON:   I think that would help me because I  
3     have excerpts in the file.

4                 MR. HARRIS:    Yes.

5                 MS. ROBESON:   Thank you.   So tell me again.

6                 THE WITNESS:   Okay.   Map 7 of the plan really kind  
7     of defines the neighborhoods.   There's Seven Oaks-Evanswood  
8     as it's defined, Woodside Park, you know, Woodside, Rosemary  
9     Hills and so forth.   The plan, when it speaks to edges, it  
10    speaks to primarily major corridors and the CBD, major  
11    transportation corridors such as Georgia Avenue or  
12    Colesville Road in the case of this master plan.   East-West  
13    Highway.   Those kinds of edges, major, major, major  
14    highways.   In this case, really, the edge that they're  
15    referring to in my interpretation of the plan is along Cedar  
16    essentially, along the edge with the CBD.

17                MS. ROBESON:   But they have, but this plan, and  
18    I'm just asking you because I think I do agree, don't carry  
19    through my, this is not a good sports car analogy but it  
20    does sort of go density-wise from 0 to 200 miles an hour in  
21    3 seconds so, which I don't even know if that's fast or not  
22    but there's a big difference.   So I guess my question is I  
23    thought that I was, I thought -- so you're saying that the  
24    edges, your position is the edges in the master plan are not  
25    the edges of the neighborhood, they're the edges of --



1 THE WITNESS: Right. They're --

2 MS. ROBESON: -- the CBD?

3 THE WITNESS: That's, that's correct. The edges  
4 of the surrounding area, as we've defined it, are totally  
5 different than the edges in the master -- when the master  
6 plan speaks of edges, it really speaks of the major  
7 transportation corridors or along the CBD.

8 MS. ROBESON: Okay. And then I had a question, in  
9 your professional opinion, I know, you know, it said you  
10 compare generic institutional uses with generic residential  
11 uses but the institutional uses here were special  
12 exceptions, correct, so they are presumptively --

13 THE WITNESS: Not all the --

14 MS. ROBESON: Well, the Chelsea School was.

15 THE WITNESS: Yes.

16 MS. ROBESON: So one could argue that it's  
17 presumptively compatible, I mean, it's not a change in  
18 zoning. It's an exception in that, well, exception is  
19 probably a misnomer but it's, in a sense, permitted by  
20 zoning.

21 THE WITNESS: Well, the school originally operated  
22 under a religious school exemption. It really did not  
23 require a special exception at the time. The special  
24 exception was only applied when the property was  
25 transferred, when ownership became from the Archdiocese to a



1 private, to a different entity. That's what really  
2 triggered the special exception process.

3 MS. ROBESON: Okay. All right. Mr. Brown, do  
4 you --

5 MR. HARRIS: May I ask a followup question here  
6 so --

7 MS. ROBESON: Well, let's keep it on --

8 MR. HARRIS: We'll come -- okay.

9 MS. ROBESON: I will give you --

10 MR. HARRIS: Okay. Fine.

11 MS. ROBESON: You know, this is an important issue  
12 and I will give you lots of time.

13 MR. HARRIS: Okay.

14 MS. ROBESON: I just, I feel it, you know,  
15 exploring -- Mr. Brown, why don't you go ahead. Do you have  
16 more cross-examination?

17 MR. BROWN: Quite a bit actually.

18 BY MR. BROWN:

19 Q Mr. Iraola, let's go back to Exhibit 30A again. I  
20 want to understand the point that you made about  
21 distinguishing between recreational, open space and green  
22 area. I believe I recollect your testimony was that there  
23 was 2.4 acres of green area, is that right?

24 A That's correct.

25 Q Now, on the site data on this exhibit, note no. 6,



1 it says open space area is 2.4 acres so on this, on this  
2 exhibit, is the open space and the green area one in the  
3 same?

4 A Yes, it is.

5 Q Well, then why does the green area say min 30  
6 percent rather than 45 percent which was the number you  
7 used?

8 A Well, they are providing the minimum. They're  
9 exceeding the minimum.

10 Q And is that why the proffer is that, on the  
11 binding element is 40 percent?

12 A Right.

13 Q And how do we know from this diagram that there  
14 actually is 2.4 acres of open space on this property? It  
15 isn't identified as such and calculated as such the way it  
16 was in that exhibit I first showed you.

17 A Would you like me to show, introduce an exhibit  
18 that has the green area clearly identified?

19 Q Well, I thought that that was an attachment to the  
20 land use and zoning report and I'm wondering if that's the  
21 one you're referring to.

22 A No, I'm not.

23 Q So do you have an exhibit that actually calculates  
24 the green area that has not been introduced into the record?

25 A Yes, I do.



1 Q I think we need that, yes.

2 MS. ROBESON: Do you have that with you?

3 THE WITNESS: Yes, I do. Okay. For the record,  
4 I'd like to introduce green area plan.

5 MS. ROBESON: Okay. And I have that as 134.

6 (Discussion off the record.)

7 MS. ROBESON: So this is Exhibit 134. Mr. Brown,  
8 do you have an objection to admitting this?

9 (Exhibit No. 134 was marked for  
10 identification.)

11 BY MR. BROWN:

12 Q Well, where are the tabulations?

13 A There are no tabulations. This is showing general  
14 area where, how that 2.4 acres is distributed. This is the  
15 green area.

16 MS. ROBESON: This is the area that you're -- is  
17 this to scale?

18 THE WITNESS: Yes, it is.

19 MS. ROBESON: Okay.

20 MR. HARRIS: If we wanted to get into the actual  
21 calculations, they were done by Bowman Consulting who will  
22 be a witness when we get to it and we can have him answer  
23 exactly how those calculations were made.

24 MS. ROBESON: Mister --

25 MR. BROWN: It might have been unnecessary if



1 they'd put this stuff in the record. I mean, this document  
2 is over a week old and it's not in the record, so I'm asking  
3 questions shooting in the dark at information that is pulled  
4 out of folders that we should have had in the record. I  
5 would like a copy of this to scale.

6 MS. ROBESON: Okay. Do you have a problem with  
7 that, Mr. Iraola, or Mr. Harris, providing Mr. Brown with a  
8 copy of this?

9 MR. HARRIS: No. I have no problem with providing  
10 a copy but --

11 MS. ROBESON: Well, why don't we do this.

12 MR. HARRIS: But I mean --

13 MS. ROBESON: Since it's here and since we know  
14 we're going to go to another hearing, let's just put it in  
15 the record now.

16 MR. BROWN: No problem.

17 MS. ROBESON: So it will be 134, green area plan.

18 (Exhibit No. 134 received into  
19 evidence.)

20 THE WITNESS: It should be noted that it will be  
21 revised with tabulations. Is that --

22 MR. HARRIS: No. I don't think --

23 MS. ROBESON: No.

24 MR. HARRIS: No. We don't have to do that.

25 MS. ROBESON: No.



1 THE WITNESS: 134.

2 MR. HARRIS: 134, yes.

3 MS. ROBESON: Now, if you have a revised plan with  
4 tabulations, I would request that prior to the next hearing,  
5 you provide that to Mr. Brown.

6 MR. HARRIS: Okay.

7 THE WITNESS: Sure.

8 BY MR. BROWN:

9 Q All right. Now I'd like you to turn to the land  
10 use and planning report and to the open space exhibit on  
11 that particular document.

12 MS. ROBESON: Can you direct us to a page, Mr.  
13 Brown?

14 MR. BROWN: I don't have a copy of the colored  
15 version so I can't tell you what tab it is but I think it  
16 was three tabs from the end or approximately. Maybe Mr.  
17 Harris can tell us.

18 MR. HARRIS: Yes. Tab, excuse me, 8. Is that  
19 what you're referring to?

20 THE WITNESS: Yes.

21 MR. BROWN: Yes.

22 MR. HARRIS: Okay.

23 BY MR. BROWN:

24 Q Did you have anything to do with this, preparation  
25 of this, Mr. Iraola?



1           A     No, I didn't.

2           Q     But it's an attachment to your report.

3           A     That's correct, but I did not prepare this.

4           Q     Do you think the numbers on it are correct or  
5 incorrect?

6           A     This is what I believe, this is a revision what  
7 I'm showing, pointing to is Exhibit 134 of this, of this  
8 plan.

9                   MS. ROBESON:  134 --

10                  THE WITNESS:  This is --

11                  MS. ROBESON:  Mr. Brown, I have to ask you, I  
12 don't quite understand where we're going with this.  If  
13 the --

14                  MR. BROWN:  I am --

15                  MS. ROBESON:  -- question is --

16                  MR. BROWN:  I'm getting -- I have all of these  
17 conflicting numbers about what they say the amount of green  
18 space is and I'm trying to understand if in fact they can  
19 meet the requirement of 30 percent minimum and can in fact  
20 meet the binding element of 40 percent minimum, and the  
21 information that has been provided to me before this moment  
22 in this hearing has been confused and contradictory and I'm  
23 trying to straighten it out.

24                  MS. ROBESON:  Well, without characterizing the,  
25 you know, what's been presented to you, I think Mr. Harris



1    stated that he has another witness that can give you those  
2    figures so that witness, it's 20 to 7, that witness I'm sure  
3    will be available to testify at some point in the hearing so  
4    I'm not sure we need to keep cross-examining on the  
5    different exhibits. Your point is the exhibits have been  
6    revised and you're saying you haven't had the opportunity to  
7    look at the revised exhibits. Is that what I'm hearing you  
8    say?

9               MR. BROWN: Well, I thought I should ask Mr.  
10   Iraola about this exhibit since it's an attachment to his  
11   report so --

12              MS. ROBESON: Well, I think he's just stated  
13   that --

14              MR. BROWN: I get the picture.

15              MS. ROBESON: Do you have any other questions?

16              MR. BROWN: Yes, I do.

17              MS. ROBESON: All right.

18              BY MR. BROWN:

19              Q    Let's stay with Exhibit 30A. Mr. Iraola, what is  
20   the setback from Springvale to the townhomes?

21              A    Minimum is 25 feet.

22              Q    That's five feet more --

23              A    Six inches.

24              Q    -- than required, correct?

25              A    No. It's five-and-a-half feet more than required.



1           Q     Five-and-a-half feet more than required. Now, you  
2 testified that you expect to justify relief from the 30-foot  
3 setback requirement in Section 59-C-1.732(a) on the grounds  
4 that providing that setback provided a more desirable form  
5 of development, correct?

6           A     I believe I was referring to the setback from one-  
7 family zoning which would be on the south side of the --

8           Q     Yes. That's what I'm talking about also.

9           A     Okay. Um-hum.

10          Q     But your rationale is that the reason it's more  
11 desirable is because you added to the setback on the north  
12 side.

13          A     That's correct.

14          Q     You added five-and-a-half feet on the north side,  
15 and how much did you take away on the south side?

16          A     I don't know.

17          Q     Well, the setback requirement is 30 feet, right,  
18 unless there's a, unless you qualify under the footnote,  
19 correct?

20          A     Correct.

21          Q     And this plan shows a setback of 20.5 feet in the  
22 narrowest places, correct?

23          A     Yes.

24          Q     So you're trading, you are foregoing nine-and-a-  
25 half feet of setback on the south side to gain five-and-a-



1 half feet of setback on the north side, is that right?

2 A Yes.

3 Q And it's your testimony that that tradeoff  
4 produces a more desirable development?

5 A Yes because the quality of the spaces are  
6 completely different.

7 Q You testified that you were very familiar with the  
8 master plan and, you know, this went by me kind of fast but  
9 there was something in there about how the master plan  
10 recognized that this area would not be developed with  
11 single-family detached homes, is that right? Could you run  
12 that by me again?

13 A Please repeat the question.

14 Q I believe you testified, in your familiarity with  
15 the master plan, that the master plan expressly recognized  
16 that this property would not be developed with single-family  
17 detached homes.

18 A That's correct because the current use at the time  
19 was an institutional school viable.

20 Q But that doesn't say anything about how it might  
21 be developed in the future if it was no longer used as an  
22 institutional --

23 A The plan is silent.

24 Q -- use, does it?

25 A The plan is silent with regards to that.



1           Q     You also said that the master plan is silent with  
2     regard to the redevelopment of this property with RT  
3     townhomes, correct?

4           A     Yes.

5           Q     The master plan is not silent with regard to  
6     redevelopment of RT along Georgia Avenue though, is it?

7           A     There is guidance in the event that an RT zoning  
8     would occur along Georgia Avenue but it falls short of  
9     actually making a recommendation for RT zoning.

10          Q     But you also agree that re-zoning, RT re-zoning is  
11     not expressly recommended for this property, correct?

12          A     Yes.

13          Q     And it's not expressly recommended anywhere except  
14     along Georgia Avenue.

15          A     I believe that the plan also reaffirms a couple of  
16     other sites that were previously zoned and built in the RT  
17     Zone elsewhere in the plan.

18          Q     Is there anything about this project in terms of  
19     its qualifications for RT re-zoning, intent and purpose  
20     criteria, that would not be equally or better satisfied with  
21     a density of RT-8 for example?

22          A     I did not evaluate the RT-8. I will say that from  
23     an appropriate standpoint, the, it's my opinion that the  
24     density certainly is appropriate for a site within a 10  
25     minute walking catchment of Metro. It should be utilized as



1 RT-15.

2 Q Did you analyze what this project would look like  
3 if it were developed under existing zoning, at R-60, with a  
4 cluster development?

5 A No, I didn't.

6 Q Did you hear me ask questions about that?

7 A Yes, I did.

8 Q Did my questions accurately reflect the  
9 development potential of this property under cluster re-  
10 zoning?

11 A I don't recall.

12 Q Let me see if I can restate them for you. My  
13 understanding is that this property would be eligible for a  
14 cluster re-zoning with townhouses and an MPU development if,  
15 but unless you got Planning Board approval, the townhouse  
16 component could not exceed 60 percent.

17 A Okay.

18 Q Do you agree with that?

19 A I haven't reviewed the Code in that detail to make  
20 that but if you're quoting from the Code, I would say you're  
21 probably correct.

22 Q And it's even conceivable that it could be as high  
23 as 100 percent townhomes, isn't that correct?

24 A I don't know. I don't know the provisions that  
25 closely of the R-60 cluster.



1           Q     Do you believe it's appropriate, as a land  
2 planner, in evaluating a request for re-zoning to evaluate  
3 what could be done under existing zoning?

4           A     Sometimes. Not, maybe not in this case.

5           Q     Why not?

6           A     At the time, you know, to me, the best, the best  
7 use would have been townhomes. To do lower density R-60  
8 zoning, kind of a conventional thing, didn't seem right  
9 looking at the configuration of the, of the property. It's  
10 very rectangular in nature. It would have chopped it up,  
11 put cul-de-sacs in there. Just my general observation of  
12 the R-60 Zone.

13          Q     But I'm talking about townhouses within the R-60  
14 Zone.

15          A     No. I did not evaluate the townhomes. For me to  
16 evaluate it, I have to lay it out and I did not lay this  
17 out. There's too many, there's too many variables with  
18 regard to development program, economics and all that stuff  
19 to, in order to truly test this for density under a  
20 different scenario.

21          Q     How did you select the RT-15 scenario?

22          A     I did not select the RT-15.

23          Q     That was given to you.

24          A     Yes.

25          Q     Well, apart from density, is there any reason to



1 believe that an RT-8 development would not provide the kind  
2 of buffer and transition that this, that an RT-15  
3 development would?

4 A The use or the density?

5 Q I'm talking about the, I'm talking about the  
6 buffer between the central business district and the R-60  
7 single-family detached development on the other side of this  
8 property.

9 A Could you restate that? I'm sorry.

10 Q Yes. Do you see any reason why this property,  
11 developed at a density of RT-8 rather than RT-15, would not  
12 perform the same type of buffer transition that an RT-15  
13 would?

14 A No. I mean, I believe that the open space are  
15 different. There's different, there's different standards  
16 for the RT-8 than there would be for the R-15 so I couldn't  
17 make that recommendation or that observation unless I really  
18 tested the site for density and find out what kind of  
19 configuration you would get at that particular density.

20 Q You haven't studied that.

21 A I haven't, I haven't laid it out. For me to make  
22 any kind of determination of what, how much capacity or  
23 density or what this site would yield, I need to lay it out  
24 physically. I did not lay it out under an RT-8. I cannot  
25 make that finding.



1           Q     Okay. I want to put this green exhibit back up  
2 again if you don't mind. Can you explain to me why some of  
3 the courtyards and backyards or townhouse, the areas in and  
4 around the townhouses on the south side are semi-private  
5 whereas the ones, some of them on the upper part are  
6 publicly accessible?

7           A     Sure. There are two types of kind of green area  
8 on this particular exhibit. There's that, that green area  
9 that we have designated as publicly accessible in my  
10 testimony which is kind of the lighter green color. The  
11 darker green color is what we would consider kind of semi-  
12 private green area. That would include the courtyard spaces  
13 which are in front of, facing each unit. They're somewhat  
14 more private than something say along a street edge.

15                 Also, taking that into consideration, some, a  
16 little smaller green step right along the stoop and sidewalk  
17 of that particular stick. This one as well and that one and  
18 also, really the entire lot for the, for the Riggs-Thompson  
19 would again be semi-private. No one would really want to go  
20 have a picnic here. They would probably more likely be in  
21 the public area picnic, and this is all semi-private.  
22 That's the distinction between semi-private and what we  
23 would consider publicly accessible.

24                 MS. ROBESON: I guess I'm a little confused by  
25 your answer. Public access has a -- are you talking semi-



1 private -- are people allowed to go on the semi-private area  
2 or --

3 THE WITNESS: It's anymore than someone would be  
4 able to come onto your property to ring our doorbell. It's  
5 still, you know, you can still access it and all that but  
6 it's your domain. It's your, you know, it's your private  
7 space.

8 MS. ROBESON: Okay.

9 THE WITNESS: The other, the lighter green would  
10 really be, would feel --

11 MS. ROBESON: Dedicated. Okay. But are you --

12 THE WITNESS: It would feel --

13 MS. ROBESON: -- talking legally open to the  
14 public or --

15 THE WITNESS: It would be treated the same way  
16 that public use space is treated in the CBD --

17 MS. ROBESON: Okay.

18 THE WITNESS: -- where it's private in nature --

19 MS. ROBESON: Yes.

20 THE WITNESS: -- but it's freely accessible to the  
21 public.

22 MS. ROBESON: I just want to make sure. I'm not  
23 sure if you were speaking from a planning standpoint or a  
24 legal standpoint.

25 THE WITNESS: This is a, I'm speaking from a



1 planning standpoint here.

2 MR. HARRIS: Ms. Robeson, Mr. Youngentob did, I  
3 believe, speak to say that it would be through an easement  
4 that would guarantee public access.

5 MS. ROBESON: The light green.

6 MR. HARRIS: The light green.

7 THE WITNESS: Correct.

8 MS. ROBESON: Okay. But not the dark green.

9 THE WITNESS: Correct.

10 MS. ROBESON: So the dark green legally is private  
11 property without any easement for public access. Okay. I  
12 just, maybe it's the late hour. I was confused on that.  
13 Okay. I'm sorry, Mr. Brown.

14 BY MR. BROWN:

15 Q Let me draw this, let me use this example and see  
16 if you agree with me, Mr. Iraola. If a Girl Scout was going  
17 through the neighborhood selling cookies and she went up on  
18 each stoop and knocked on the door to check on the potential  
19 sales, that would be sort of a business invitee occupancy of  
20 private space that would be generally considered  
21 unquestionable, correct?

22 A If a Girl Scout were to go up onto a stoop and  
23 ring the doorbell?

24 Q And ask about buying cookies.

25 A Asking to buying cookies.



1           Q     Assuming there wasn't any sign about no  
2     solicitations.

3           A     She would be as comfortable as she would want to  
4     as going into any of the other homes in the neighborhood.

5           Q     She wouldn't be regarded as a trespasser, right?

6           A     No. Well --

7           Q     If she and her girlfriends decided to camp out on  
8     some neighbor's doorstep for the evening, that would be a  
9     whole different story, right?

10          A     If it was internal and out -- in the green area, I  
11     think it would be acceptable.

12                 MS. ROBESON: Well, which green?

13                 THE WITNESS: The light green would be --

14                 MS. ROBESON: The light green.

15                 THE WITNESS: -- would be acceptable.

16                 MS. ROBESON: Good answer. I understand that.

17     Okay. Go ahead. Now, Mr. Brown, it is five minutes to 7.

18     Do you want to ask one more question or do you want to wait  
19     for the next hearing? I don't want to stop you if you're on  
20     a roll.

21                 MR. BROWN: I would like to wait until the next  
22     hearing.

23                 MS. ROBESON: Okay. What I'm going to do is this.

24     As we discussed, I recalled afterwards that one of -- thank  
25     you.



1                   MR. HARRIS:  Grab my master plan if you would.

2   Thank you.

3                   MS. ROBESON:  Oh, yes.  I recalled after we  
4   started that you have one witness that is out of the country  
5   on the 6th, the land planner, so what I am going to do is  
6   we're going to use the 6th for everything else and stick  
7   with the original plan as far as, try to stick with the  
8   original plan as far as the 30th.

9                   MR. BROWN:  This is fine with us as long as the  
10  people who cannot come on the 6th can testify on the 30th.  
11  I don't think that's going to be a large number, and none of  
12  them are going to take more than a few minutes.

13                  MS. ROBESON:  Well, at this point, we will try to  
14  accommodate them.  I think to be fair, I have to finish --  
15  this is Mr. Harris' time to present testimony and I'd like  
16  to get through that first.

17                  MR. BROWN:  Okay.

18                  MS. ROBESON:  And if we can accommodate you, we  
19  will certainly make every effort to accommodate your  
20  witnesses that can't be here on the 30th.  Hopefully, all  
21  before 5:00.  So I am going to continue this case to June  
22  6th at 9:30 and June, if necessary, June 30th at 9:30, all  
23  right.  The file is available for review here.  We did have  
24  some exhibits come in yesterday and this morning and at the  
25  hearing, so you are welcome to review the file between 8 and



1 4 p.m. Anything else? Yes.

2 MS. VINCENT: Not 8. We're not open at 8.

3 MS. ROBESON: Oh, 8:30. Okay. I just, we do have  
4 our administrative assistant here and she is asking for one  
5 day to make sure we get all the exhibits in order and into  
6 the file. If you could come Tuesday, that would be better  
7 but you do have public access at any time between those  
8 hours. Okay. Anything else from the parties? Well, I  
9 certainly appreciate your patience today, and we will  
10 reconvene June 6th at 9:30.

11 (Whereupon, at 6:57 p.m., the proceedings were  
12 concluded.)

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% Digitally signed by Josephine Hayes

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Chelsea School

Case No. G-892

By:

*Josephine Hayes*

\_\_\_\_\_  
Josephine Hayes, Transcriber